SUPREME COURT OF THE UNITED STATES.

No. 59.

CHARLES KELSEY AND CHARLES McINTIRE, APPL'TS,

vs.

ALFRED M. HOBBY AND THOMAS P. BOND, COMPL'TS.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

A. M. HOBBY and THOMAS P. BOND, of Georgia
vs.
CHAS. KELSEY and CHAS. McINTYRE, of S. Carolina. } In Chancery.

To the Honorable William Johnson and Thomas Lee, Judges of the Federal Circuit Court for the District of South Carolina.

Humbly complaining show unto your honors your orators Alfred M. Hobby and Thomas P. Bond of Macon in Georgia, citizens of the State of Georgia, that your orator Alfred M. Hobby heretofore carried on business in Georgia with Charles Kelsey and Charles McIntyre, at present citizens of the State of South Carolina, under the name and mercantile firm of C. Kelsey and Company; that sometime previous to the ninth day of February 1822, your said orator and his said partners, agreed to dissolve their partnership and thereupon came to an agreement with one another for the settlement of their partnership accounts.

That afterwards to wit on the said ninth day of February 1822, the terms of the said agreement being settled, the same were reduced to writing and signed by your said orator, and the said Charles Kelsey and Charles McIntyre as follows:

No 1.—*Bill for Account.*

"Articles of agreement entered into, at the dissolution of the firm of C. Kelsey & Co., between Alfred M. Hobby of the first part and Charles Kelsey and Charles McIntyre of the second part, witnesseth that the said Alfred M. Hobby doth agree to withdraw from the said firm upon the following conditions viz, that the said parties of the second part are to take upon themselves the entire settlement of the business of the said firm, and are to pay to the said A. M. Hobby, after the debts of the said firm are all paid and discharged and a sufficient sum collected out of the debts now due to the said firm, five thousand, five hundred dollars, and in Bridge bills whenever he shall demand them, one thousand, one hundred and thirty dollars. And the said A. M. Hobby for and in consideration of the above sums of money to be paid, and the further sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, hath relinquished, and by these presents doth transfer to the said parties of the second part all his interest or claims of whatever nature he has or may have as a partner in the said firm. It is also stipulated and agreed that the said A. M. Hobby of the first part in consideration as above specified, is to protect the said parties of the second part from a certain judgment obtained against said firm by the branch of the United States Bank in this city, and to hold them harmless from any balance should there be any due

after the conclusion of the settlement between John McKinnie and Thomas Gardner respecting the said judgment. And for the faithful discharge of this agreement we bind ourselves, our heirs, executors, administrators or assigns.

Witness our hands and seals this ninth day of February one thousand eight hundred and twenty-two.

A. M. HOBBY, [L. S.]
CHARLES KELSEY, [L. S.]
CHARLES McINTIRE, [L. S.]

In presence of JAMES W. TAYLOR."

Your orators further show unto your honors that your orator Alfred M. Hobby has fully complied with the said agreement on his part: that he has called on the said Charles Kelsey and Charles McIntire to comply with the said agreement on their part; but they have hitherto refused to do so, and have neither paid to your said orator the said sum of five thousand, five hundred dollars nor any part thereof, nor have delivered to him the Bridge bills specified, for the amount of eleven hundred and thirty dollars nor any Bridge bills whatever. That your orators have come to an agreement by which your orator Thomas P. Bond for valuable consideration has become entitled to all the right and interest of your other orator in the contract above set forth, and your orator Alfred M. Hobby has assigned the said covenant to him the said Thomas P. Bond, and appointed him his attorney to recover to his own use the money that may be due thereon. That your orator the assignee of the said covenant has also applied to the said Charles Kelsey and Charles McIntire for an account of the assetts of the partnership, and for payment of the said sum of five thousand, five hundred dollars and for the delivery of the said Bridge bills. And your orator had well hoped that the said Charles Kelsey and Charles McIntire would have complied with their requests in that behalf. But now so it is may it please your honors that the said Charles Kelsey and Charles McIntire, combining and confederating together with divers persons to your orators unknown whose names when discovered, they pray may be herein inserted with proper and apt words to charge them in the premises, to wrong and injure your orators sometimes pretend that the concern of C. Kelsey and Company was indebted at the time of the dissolution of the partnership to the full amount of their joint effects. Whereas your orators insist that the said concern was solvent, and that there is a surplus after paying the partnership creditors sufficient to satisfy your orator's demands according to the said agreement; and that the said Charles Kelsey and Charles McIntire at the time of the dissolution of the said partnership, had in their possession and still have Bridge bills for the payment of an amount exceeding one thousand one hundred and thirty dollars, belonging to the said firm of C. Kelsey and Company. And again the said Charles Kelsey and Charles McIntire sometimes pretend that the outstanding debts due to the

firm of C. Kelsey and Company, have not been collected. Whereas your orators insist that it was the duty of the said Charles Kelsey and Charles McIntire to collect all the said debts, and that they are responsible for the debts which they might have collected by due diligence, as well as for those which have been actually collected.

And again the said Charles Kelsey and Charles McIntire pretend that they are willing to make a distribution of the funds of C. Kelsey and Company in their hands, and to pay your orator Thomas P. Bond his proportionable part thereof. Whereas your orators contend that they are entitled to the payment of the full sum of *of* five thousand five hundred dollars, and to the delivery of the said Bridge bills according to the agreement above set forth and that a distribution between the partners is not to be made, but a settlement according to the said agreement. But again the said Charles Kelsey and Charles McIntire refuse to come to any account, or to give your orators any satisfactory information in the premises.

All which actings and doings of the said Charles Kelsey and Charles McIntire, are contrary to equity and good conscience, and tend to the manifest injury of your orators. In tender consideration whereof, and for as much as your orators are remediless at common law, and can only have adequate relief in this honorable court. To the end, therefore, that the said Charles Kelsey and Charles McIntire (and the rest of the confederates when discovered) may upon their respective corporal oaths, full, true direct and perfect answer make, according to the best of their knowledge information and belief to all and singular the matters and things hereinbefore stated and charged as fully and particularly in every respect as if the same were hereinafter again repeated and they interrogated thereto. And more especially that the said Charles Kelsey and Charles McIntire may answer and set forth whether your said orator Alfred M. Hobby was not a partner with them in the house of C. Kelsey and Company? And whether the partnership was not dissolved as hereinbefore stated? And whether the agreement herein set forth, was not entered into by them? And that they may admit assets of the said firm of C. Kelsey and Company to satisfy your orator's demand, or set forth an account of the said firm of C. Kelsey and Company, and of the debts due and owing by the said firm, and of the stock of the said firm, and the moneys due and owing to the said firm, at the time of their dissolution. And that they may be compelled to deliver the Bridge bills hereinbefore mentioned and to pay the sum of five thousand five hundred dollars, out of the funds of the said firm of C. Kelsey and Company to your said orator Thomas P. Bond, together with interest from the time when the said Charles Kelsey and Charles McIntire had assets to pay the same, and also interest on the amount of the Bridge bills from the time of demand. And that the books of account of the said firm may be brought into court for the inspec-

tion of your orators. And that such further and other relief in the premises may be granted to your orator as the nature of the case may require and to your honors may seem meet. May it please your honors to grant unto your orators a writ or writs of subpœna to be directed to the said Charles Kelsey and Charles McIntire (and the rest of the confederates when discovered) thereby commanding them and every of them at a certain day and under a certain penalty personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to and abide by such order, direction and decree as to your honors shall seem meet, and shall be agreeable to equity and good conscience. And your orators will ever pray and so forth.

PETIGRU & CRUGER,
Compl'ts Sol'rs.

Filed 27 November, 1829.

The subpœna in this case having been returned served, no appearance entered, and no answer having been filed within three months after the day of appearance, on motion of Petigru and Cruger, ordered that the bill be taken pro confesso against the defendants.

JAMES JERVEY, *Dist. Clerk.*

5 April, 1830.
This order only refers to Charles McIntire. J. J.

THE UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

A. M. HOBBY and THOMAS P. BOND of Georgia,
vs.
CHARLES KELSEY and CHARLES McINTIRE. } In Equity.

No. 2.—Separate Answer of C. McIntire.

The separate answer of Charles McIntire one of the defendants to the bill of complaint of Alfred M. Hobby and Thomas P. Bond complainants.

This defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer to it or to so much of it as he is instructed it is material or necessary for him to answer, he answers and says—that he this defendant admits that the complainant Alfred M. Hobby and Charles Kelsey and this defendant sometime in the year one thousand eight hundred and nineteen, entered into a copartnership in trade, and that the said partnership continued until about the ninth day of February, one thousand eight hundred and twenty-two, when the same was dissolved by the agreement of that date set forth in the said bill of

complaint—which the defendant believes, is there correctly stated. But the said Alfred M. Hobby and the said Charles Kelsey had been in copartnership in trade for a considerable period previously to 1819, namely from sometime in 1817 and debts to a considerable amount were outstanding and due to them, when this defendant joined the copartnership, and a portion of these debts remained uncollected when the copartnership was finally dissolved, and at the time of the dissolution of the said copartnership a list or schedule of the debts then supposed to be probably good, and embracing as well those due and owing to the former, as those due and owing to the latter firm, was made out and formed the basis of said agreement and the fund from which was expected to be realized as much as would in the first place pay all the debts due by the concern, and then in the second place after defraying the expenses and charges necessarily incurred in winding up these affairs, pay to the complainant the said Alfred M. Hobby the amount stated in the said agreement, and a copy of the said list or schedule is herewith filed as a part of this answer Exhibit A, and to it all necessary reference is craved, and many of the debts then supposed to be good have turned out bad, though all due diligence has been used to make collections and some collections have been made from debts which were then supposed utterly bad, and Exhibit B, herewith filed as a part of this answer and to which all necessary reference is craved, shows fully all the collections which have been made and the funds realized from the assets of the said two copartnerships since the agreement aforesaid and proves conclusively that so much has not been collected from the said assets, as to entitle the said Alfred M. Hobby or any one claiming under him, to the sum mentioned in the said agreement, were he otherwise, as this defendant by no means admits entitled to receive the same. The debts due by the concern of Charles Kelsey and Company, were very considerable, as will appear by the statement subjoined to said Exhibit B and on many of the amounts there stated, this defendant and his co-defendant were compelled to pay interest to a large amount, which is not carried out in the said statement, but is chargeable and when charged in account, and with the principal sums paid, amounts to considerable more than all the funds that have been collected from the assets of the said two copartnerships, and heavy expenses have been incurred in winding up the affairs of the said copartnerships, and in collecting the said debts due to them which as well as the said interest money are chargeable, as this defendant submits and contends on the amount collected, before any thing can be coming to the said Alfred M. Hobby. And this defendant further submits and contends that he and his co-defendant Charles Kelsey are justly and equitably, and according to the usage and custom of merchants entitled to a commission of two and a half per cent. on all the sums collected and paid by them before any thing can go to the said Alfred M. Hobby, and this defendant further submits and contends that the losses that

were sustained in making provision to pay the debts due by these copartnerships must be rateably and proportionably borne by the copartners. And this defendant further answering submits and contends that the said Alfred M. Hobby and any one claiming under him is in truth and in fact entitled to nothing from this defendant or his co-defendant Charles Kelsey because he this defendant says and alleges that the said Alfred M. Hobby utterly failed to perform the part of the agreement that was obligatory on him and which was in truth the consideration for the agreement on the part of this defendant and his co-defendant Charles Kelsey. It is specially stipulated and agreed in the said agreement, that in consideration of the things therein specified to be done by these defendants, he the said Alfred M. Hobby would protect them from a judgment obtained against the firm by the branch of the United States Bank in Savannah, and to hold them harmless in any settlement that might be made between a certain John McKinnie and Thomas Gardner in relation to the said judgment. The complainant Alfred M. Hobby is, as this defendant believes the nephew of John and Barna McKinnie who were at the time this defendant in 1819 entered into the copartnership of Charles Kelsey and Company, carrying on business to a large amount in the State of Georgia, and soon after the said firm endorsed the paper of the said Barna McKinnie and of John Tanner with Barna McKinnie as first endorser to a large amount. In the course of 1819 and 1820, these parties failed, and Charles Kelsey and Company were deeply involved in their embarrassments. It was therefore of the utmost importance to these defendants Charles Kelsey and Charles McIntyre in 1822 that they should be protected from the operation of the judgment mentioned in said agreement. But so far was the complainant A. M. Hobby from performing the agreement on his part, as he was clearly bound to do, that he permitted the said judgment or rather the execution issued thereon, to be actually levied on the goods of this defendant and the said co-defendant Charles Kelsey, to their great embarrassment, mortification and injury, and though their goods were not finally sold under the levy, they the said defendants were only after various efforts of their own finally extricated with the great loss of capital, and much injury at the time to their credit, and the defendant submits and contends that the said agreement was in fact entirely annulled and vacated by the failure of the said A. M. Hobby to perform his part of the said agreement, and the defendant has always been and is now willing to come to a full equitable and final settlement with the said A. M. Hobby and never did refuse to give him any information respecting the affairs of their late copartnership. Indeed no such information was ever asked of him which was not immediately furnished until the said agreement was, as this defendant has understood, placed in the hands of the complainants' solicitors for suit, and this defendant though he does not admit the right of the said complainant A. M. Hobby, to the amount of Bridge bills mentioned in the

agreement, has always been ready and willing to give them to him, or his duly authorized representative, but the said A. M. Hobby well knew that these very bills were placed in the hands of C. Breithaupt of Edgefield district attorney at law for suit, and have been prosecuted to judgment, and no demand was ever made on this defendant for these bills until the said agreement was about to be put in suit. And this defendant is now, and always has been, so far as he was concerned, ready and willing to give an order on the said attorney for the said Bridge bills, and he now tenders such an order, though in making this tender he by no means would admit the right of the said A. M. Hobby to claim under the said agreement and he this defendant has understood and believes that his co-defendant Charles Kelsey altogether denies the right of the said A. M. Hobby or any one claiming through him now to receive these bills, and this defendant can neither admit nor deny that the complainant Thomas P. Bond is the assignee of the complainant Alfred M. Hobby and he submits that the claim of the said Thomas as the assignee of the said Alfred must be duly proved according to the rules of law—and if he indeed be the assignee of the said Alfred then this defendant submits and contends that the claim to which he may be entitled if he has any claim is subject to the same equities in all respects as if it had remained in the assignor the said Alfred M. Hobby, and this defendant further answering says that his co-defendant Charles Kelsey does not reside within the said State of South Carolina, and is now and has been since the year eighteen hundred ane twenty-five a citizen of and resident in the State of New York, and this defendant denies all unlawful combination and confederacy. Without that that any other matter cause or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver maintain and prove as this honorable court may direct and he prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

KING, *Solicitor.*
CHARLES McINTIRE & CO.

Sworn to before me this 7th April, 1830.
JAMES JERVEY, *Dist. Clk.*

Filed 7 April, 1830.

No. 3. Exhibit A.

A. M. Hobby & Thos. P. Bond, *vs.* Chs. Kelsey & Chs. McIntire, } Exhibit A.

Notes receivable and book ac'ts due C. Kelsey & Co.

Billups & Rainey due December 16th 1818 -	1,119 73		
Received on account - - -	225		
		894	73
H. W. Really's 2 notes, 1 due Oct. 1, 1819 -	410		
1 due Nov. 13, do -	930 65		
	1,340 65		
Received on account - -	193 34		
	1,147 31		
Received in payment house lot and small notes from which we shall probably realize - - - - -		$ 700	
Ransom Wonill balance due on note -		600	
J. Salstendall & J. Foster balance due $1,008 probable amount to be received -		400	
Hunter & Borde balance due on note $775 15 probable amount to be received -		500	
Jas. Fume balance due on notes and interest		975	43
J. & L. Tison balance due on notes -	$732 44		
Received in payment a lot of land worth probably - - - -		150	
J. & O. D. Watson's note - - -		234	04
Finguar and Coleman's balance due on note		648	97
Morgan & Varnum due February 13th 1820 -	1,320 57		
Interest - -	202 40		
		1,522	97
Ballard and Ruslin balance due - -	491 82		
Interest - -	108 60		
		600	42
Wm. Bunows note due 27th December, 1820	986 76		
Interest - -	78 88		
		1,065	64
Watts, Bundy & Co. due December 25, 1820	344 33		
Interest - -	27 52		
		371	85
Tate & Vardell balance on note - -		453	
Roger McKinnie note - - -	1,010 29		
Interest - -	27 52		
		1,077	62
J. & O. D. Watson's note - - -		379	55
Tandy D. King due 25th December, 1821 -		261	50
Bouswell & Blow do do		250	

P. F. Gray	100
C. C. Webb	45 12
Isaac Harvey	35
Lucy Thomas balance due	250 00
Balance due on notes in H. Parish hands	144 13
do do do P. B. Graves	276 18
T. M. Bradford's three notes	2,009 71
Balance on Jos. George note	484
S. Perry's note	736 58
Elias Beall	140 75
Peter Davis	184 28
Brooks & King	493 77
R. Beasley	290 95
J. & J. Anderson	383 47
E. & H. Wood	109 15
Wm. Godfrey	280 02
Rees & Maugham	424 46
Chapman & Atkins	229 67
Vicar & Justice	185 78
A. Dubourg	264 20
A. C. Farquar	200
Bevans & Donelly	600
S. & L. N. Sturgis	323 73
J. Bates & J. Ellis	63
J. W. Cannon balance on note	281 62
	19,621 29

Balance due on book accounts.

Isaac Norton	142 29
R. Wagner	3
Cannon & Fowler	512 89
J. W. Cannon	56 99
Thomas Gardner	198 66
J. Dixon & Co.	10
S. C. & J. Schenck	15
G. A. Edwards	28
J. Morrison	6 50
S. Rockwell	73 75
Wm. Holibrook	284 46
Col. Tatnall	63 35
Jas. George	61 93
E. Copper	9 18
A. B. Fannar & Co.	28 13
John McKinnie	105 81
J. D. Bolderman	94 75
Henry W. Hills	13
Estate of John Tanner	1,037 37

Thos. B. Stubbs		26 36	
W. J. Hobby		92 60	
Forward			19,621 29
S. H. Stockin		39 75	
Pouyat & Holland		9	
E. T. Courtenay		88 16	
N. & O. Legrul		54 57	
M. W. Allister		98 85	
R. Beasby		18	
Eliz. McMunce		66 87	
A. Blake		1	
W. J. Wray		83	
James Morrison		48 56	
Col. Tatnall		45 19	
Johnston & Hills		14 50	
			3,349 30
Goods on hand as per inventory		5,599 37	
70 bales cotton remitted to New York		3,400	
House and lot bought of John George		2,500	
Negro boy Marcus		500	
Horse and gig		200	
Bridge bills		2,260	
Wm. Stanton's due bill		65	
Cash on hand		670	15,194 37
			38,164 96

Amount of debts due by C. Kelsey & Co.

John Tanner	324 61
J. Little & Co.	43 39
Thaddeus Phelps & Co.	6,370 34
Johnston & Hills	568 59
Barna McKinne	5,397 75
Daniel W. Shine	83 50
J. B. Herbert & Co.	47 52
Harris Johnston & Co.	2,706 48
McKinnie & Co.	1,699
Sharp & Tattle	1,096 59
Robert Jaffray & Co.	265 35
Anson Blake	114
State Bank	3,400
Draft in favor Franklin & Mortimer int. added	232 08
" " D. Dunham & Co.	294 88
2 " " S. Marsh & Brooks	1,490 14
Balance due F. & H. Sheldon & Co.	1,923 39
	$26,057 91

January 22d, 1822. Filed 7 April, 1830.

No. 4, Exhibit B.

A. M. Hobby & Thos. P. Bond,
vs.
Chs. Kelsey & Chs. McIntire. } B.

C. McIntire says in answer to said bill, that previous to the dissolution of the late firm of C. Kelsey & Co., to wit on the 22d of January 1822, a statement was drawn out of the amount due by said firm, and of the debts owing to it then supposed to be good; and that the said statement formed the basis upon which the terms of dissolution were settled. A copy of it marked A is hereunto annexed.

The following exhibits the amount collected on each separate debt, and what yet remains due.

			Collected.	Unpaid.
Billups & Rainy, due Dec. 16, 1818	$1,119 73			
Received on account –	225 00			
		$894 73		
Collected March 23d, 1822 – –	$700 00			
1823 – –	225 00			
May 22d, " – –	180 00			
		–	$1,105 00	
Henry W. Really, Oct. 1st, 1819 $410 00				
Nov. 13, " 930 65				
1,340 65				
Received on account 193 34				
	$1,147 31			
A house and lot, and small notes taken for this debt, supposed to be worth – – – –		700 00		
The house and lot sold for $200 to James Brights, in 1824; for the notes nothing was ever realized, although every effort was made to collect them –		–	200 00	500 00
J. Salstonstall & J. Foster, balance due on note, $1,008. It is supposed to be worth – –		400 00	–	400 00
One of the parties died; the other was sued and proved insolvent, and nothing has been, or ever can be realized for this debt.				
Remson Murrill, balance on note – – –		600 00		
This was considered doubtful; but after a long suit the parties were compelled to pay damages, and was obtained after deducting costs, $1,365 64 –		–	1,365 64	
		$2,594 73	$2,670 64	$900 00
Hunter & Borde, balance on note, $755 15; supposed to be worth – – – –		500 00		
The attorney who had charge of this debt neglected it. A rule of court was obtained against him, and after much trouble and expense we collected $648		–	648 00	
James Furze, balance due on note and interest; the whole amount collected – – – –		975 43	975 43	
J. & L. Tyson, balance due on note, $732 44. Took in payment a lot of land in Twigg's county, supposed to be worth – – – –		150 00		

			Collected.	Unpaid.
This lot remains unsold, and cannot be disposed of at the estimate			–	150 00
J. & O. Watson's two notes	$234 08			
	379 55			
		613 63		
After various ineffectual efforts to collect this debt, the parties being much involved and insolvent, the notes were disposed of to John Rawls, on the 1st April, 1824, for his notes at 6 months, for $350, which was paid		–	350 00	263 63
Farquar & Coleman's note, balance due		648 97		
On the 6th March, 1823, collected	$369 11			
Bought in house and lot, which was sold on the 24th of July, 1828, for	75 00			
		–	444 11	204 86
Morgan & Vainune's note, due 13th February, 1820	$1,320 57			
Interest up to this day	20 240			
		1,522 97		
After deducting lawyer's fees, received on the 1st of April, 1822, $1,504 30		–	1,504 30	
		$7,005 73	$6,592 48	$1,518 49
Ballard & Neshin's note, balance due	$491 82			
Interest up to this day	108 60			
		600 42		
Collected May 11th, 1822, $273 38		–	273 38	327 06
For the balance we took part of a lot of land near Macon, on which we will lose the full amount remaining due.				
William Burrows' note, due 27th Dec., 1820	$986 76			
Interest to this day	78 88			
		1,065 64		
			1,065 64	
Watts Bandy & Co.'s note, due Dec. 25, 1820	$344 33			
Interest	27 52			
		371 85		
Collected on judgment against them, March 18th, 1823		–	187 50	
The parties proved insolvent, and nothing more will be collected		–	–	184 35
Tate & Vardell, balance due on note		453 00		
Whole amount collected		–	453 00	
Roger McKinne's note	$1,010 29			
Interest	67 33			
		1,077 62		
Total amount collected on this debt		–	1,106 00	
Tandy D. King, due 25th Dec., 1821		261 50		
Whole amount collected		–	261 50	
Braswell & Blow, due 25th Dec., 1821	$250 00			
Peter W. Gray	100 00			
		350 00		
Collected with interest		–	367 72	
Charles C. Webb's note, due Dec. 25, 1821		45 12		
Absconded, worth nothing		–	–	45 12
		$11,230 88	$10,307 22	
Isaac Harby, due 25th December, 1821		35 00		
Collected		–	35 00	
Lucy Thomas, balance on note		250 00		
Collected, with interest, September 17, 1822		–	399 27	

		Collected.	Unpaid.
Balance on small notes in the hands of H. Parish Clinton	144 13		
January 24, 1825, collected on account, $50	–	50 00	
Remaining due, not collectable	–	–	94 13
Balance due on notes in the hands of Peter B. Green, afterwards transferred to Thad. G. Holt for collection	276 18		
Collected on account, $130	–	130 00	
The balance, it is supposed, will never be worth anything	–	–	146 18
Thomas M. Brailsford's three notes put in suit, and judgment obtained. He has left Georgia insolvent, and now resides in Florida. It is very doubtful whether any thing can ever be collected	2,009 71	–	2,009 71
Balance due on Joseph George's note	484 00		
Collected on this note $331 15	–	331 15	
The balance, it is not likely, will ever be collected, as the drawer is insolvent	–	–	152 85
S. Perry's note	736 58		
Paid, with interest, April 22, 1822	–	756 00	
Elias Beall's note	140 75		
Paid in full	–	140 75	
	$15,307 23	$12,149 39	$4,804 93
Peter Davis's note	184 28		
In judgment, but worth nothing	–	–	184 28
Brooks & King's note	493 77		
Paid in full	–	493 77	
R. Beasly's note	290 95		
Paid in full, March 1st, 1822	–	290 95	
J. & J. Anderson's note	383 47		
Paid in full, March 1st, 1822	–	383 47	
E. & H. A. Wood's note	109 15		
Paid in full, March 1st, 1822	–	109 15	
William Godfrey's note	280 02		
Paid in full, June 14th, 1822	–	280 02	
Rees & Maugham's note	424 46		
Paid in full	–	424 46	
Chapman & Atkins's note	229 67		
Paid, with interest	–	232 61	
Vicker & Justice's note	185 78		
Paid, with interest	–	188 15	
A. Dubourg's note	264 20		
Paid in full	264 20	264 20	
H. C. Ferguson's note	200 00		
Paid in full	–	200 00	
Bevins & Donell's note	600 00		
Paid in full	–	600 00	
S. & N. L. Sturges's note	323 73		
Paid in full	–	323 73	
	$19,276 71	$15,986 90	$4,989 21
J. Bates & J. Ellis' note	63 00		
The parties insolvent	–	–	63 00
J. W. Cannon, balance on note	281 62		
Paid in full	–	281 62	
Open accounts on book:			
Isaac Norton	142 29		
Paid in full	–	142 29	
Richard Wayne	3 00		
Paid	–	3 00	
Cannon & Fowler	512 89		

		Collected.	Unpaid.
Paid	–	512 89	
J. W. Cannon	56 99		
Paid	–	56 99	
Thomas Gardner	198 66		
Paid in part of judgment, vs. C. Kelsey & Co., on account endorsements on paper of John McKinne	–	198 66	
J. Dixon & Co.	10 00		
Paid	–	10 00	
S. C. & J. Schenck	15 00		
Paid	–	15 00	
G. A. Edwards	28 00		
Paid	–	28 00	
James Morrison	6 50		
Paid	–	6 50	
S. Rakwell	73 75		
Settled by attorney's fees	–	73 75	
	$20,668 41	$17,315 41	$5,052 21
William Holbrook	284 46		
Received 29th April, 1826	–	279 00	5 46
Colonel E. T. Tatnall	63 35		
Paid in full	–	63 35	
Joseph George	61 93		
Insolvent, not collected	–	–	61 93
Edward Copper	9 18		
Paid in full	–	9 18	
A. B. Fannin & Co.	28 13		
Paid in full	–	28 13	
John McKinne	105 81		
Paid in settlement of account with McKinne & Co.	–	105 81	
J. D. Bolderman	94 75		
Received on account A. S. Jones's note, $83 91	–	83 91	10 84
Henry W. Hills	13 00		
Paid in full	–	13 00	
Thomas B. Stubbs	26 36		
Settled, in part, by freight due him on cotton, $29 76	–	26 36	
Estate of John Tanner	1,037 37	–	1,037 37
We had the settlement of this insolvent's estate, being endorsers on his paper for a large amount. The estate now owes us for actual advances upwards of $7,000, which we have no prospect of ever receiving. Mr. Tanner is dead.			
	$22,392 75	$17,924 15	$6,167 81
William I. Hobby	92 60		
In consideration of an unsettled account between him and his son, A. M. Hobby, this account never presented	–	–	92 60
S. H. Striking	39 75		
Paid in full	–	39 75	
Poyatt & Holland	9 00		
Paid	–	9 00	
E. T. Courtenay	88 16		
Received on account, $29 76	–	29 76	58 40
The balance will never be collected.			
N. & O. Legriel	54 87		
Paid in full	–	54 87	
M. McAllister	98 85		
Paid in full	–	98 85	
R. Beasly	18 00		
Paid	–	18 00	
Eliza McMuner	66 87		

		Collected.	Unpaid.
Collected $50; being poor, remitted $16 87 –	–	50 00	
Anson Blake – – – – –	1 00		
Paid – – – – –	–	1 00	
William J. Wray – – – – –	83		
Not collected – – – – –	–	–	83
James Morrison – – – – –	48 56		
Paid by attorney's fees, on account late firm –	–	48 56	
	$22,910 94	$18,288 51	$6,319 64
Colonel E. F. Tatnall – – – –	45 19		
Paid in full – – – – –	–	45 19	
Johnson & Hills – – – – –	14 50		
Paid in full – – – – –	–	14 50	
Goods on hand, per inventory – – –	5,599 37	5,599 37	
70 bales of cotton remitted, Haines, Johnston & Co., December 17th, 1821 – – – –	3,400 00		
Shipped to Liverpool, and sold at a loss of $25 71; besides freight to New York and expenses, $187 13. 70 bales cotton, $3,400.			
Less, deficiency in sales – $25 71			
Expenses – – – 187 13			
$212 84	–	3,187 16	212 84
House and lot bought of Joseph George – –	2,500 00		
Disposed of to United States Bank, in part payment of judgment against C. K. & Co., on account endorsements of John Tanner – – –	–	–	2,500 00
Negro boy Marcus – – – – –	500 00		
Sold – – – – – –	–	500 00	
Horse and gig – – – – –	200 00		
Sold for $161 60 – – – – –	–	161 60	
Bridge bills – – – – –	2,260 00		
Put in suit in Edgefield district, and judgment obtained, but no collections made; $1,130 is held subject to the order of Mr. Hobby – – –	–	–	2,260 00
	$37,430 00	$27,796 33	$11,330 88
William Stanton's due bill – – – –	65 00		
Never collected – – – – –	–	–	65 00
Cash on hand – – – – –	670 00	670 00	
	$38,165 00	$28,466 33	$11,395 88
In addition to the money received, as acknowledged in the above statement, the following amounts have been collected for debts supposed to be bad:			
June 10th, 1822, C. Breithaupt's, on account E. R. Billings & Co. – – – – –	–	380 00	
February 8th, 1824, on account Stibbins & Mason, per J. & B. Cady – – – –	–	150 00	
On account J. Raple's note, secured by the note of Goldthwaite, who removed to Alabama – –	–	400 00	
Rent of house in Dublin – – – –	–	36 00	
From sale of sideboard – – – –	–	28 50	
Wade & Hanahan, on account J. R. Warner –	–	120 00	
		$1,114 50	

The amount due by C. Kelsey & Co. at the time of dissolution, was as follows:

John Tanner	324 61
J. Little & Co.	43 39
T. Phelps & Co.	6,370 34
Johnston & Hills	568 59
Barna McKinne	5,397 75
D. W. Shine	83 50
J. B. Hurlbut & Co.	47 52
Haines, Johnston & Co.	2,706 48
McKinne & Co.	1,699 00
Sharp & Tuttle	1,096 59
R. Jaffray & Co.	265 35
Anson Blake	114 00
State Bank of Georgia	3,400 00
Dft. in favor of Franklin & Menton, with interest	232 08
Do do D. Dunham & Co.	294 88
Do do S. Marsh & Brooks	1,490 14
Balance of account due F. & H. Sheldon & Co.	1,923 39
	26,057 61

The whole of this amount is paid, and in addition the following amounts which were overlooked or were not then known to be due:

March 12th, 1822, Butler & Hoper, freight on 14 bales of cotton brought from Milledgeville, January 1821	46 29
May 3d. W. Monk's balance on dft. on Pott & McKinne, protested	242 26
Thos. Phelps & Co. Insurance on goods by Savannah in October, 1821, omitted in the former account	101 25
Expenses on house and lot in Dublin	33 09
Sept. 23d, 1822, paid F. A. Tracy the balance due on dft. in favor Pott & McKinne, with interest and expenses	235 50
June 7, 1823. R. W. Cook atty's fees in case of J. Robinson & Co.	43 00
Dec. 4. Paid in part for land taken to secure debt of Ruthin & Ballard	240 37
Dec. 20th. Bill to J. W. Long	6 00
Sept. 1826. S. Marsh for principal and interest of note omitted in statement	1,132 56
Sept. 1826. F. H. Nicoll dft. to Pott & McKinne, drawn by C. Kelsey & Co. in 1819 for their (P. & McK's) accommodation, but which we were obliged to pay	386 00
Amount of T. Gardner's account in part judgment	198 66
S. Rakwell's account settled by atty's fees	73 75
T. B. Stubbs freight on cotton	29 76
James Morrison atty's fees per amount his account	48 56
	$2,817 05

Filed 7th April, 1830.

No. 5. Order of Reference.

TUESDAY, 23*d November*, 1830.

The circuit court met according to adjournment. Present his honor William Johnson.

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } Equity.

Ordered that it be referred to the clerk acting as master to adjust and report upon the accounts between the parties composing the firm of Chas. Kelsey & Co.

No. 6. *Summons to attend Reference.*

THE UNITED STATES OF AMERICA,
South Carolina District.

A. HOBBY AND THOS. P. BOND
vs.
CHARLES MCINTYRE. } In Equity.
District Clerk's Office,
September 19, 1834.

It having been referred to me to examine the accounts in this case and report thereon, notice is hereby given that a meeting will be had in the United States district court room on Wednesday the 24th day of September instant, at 10, A. M.

JAMES JERVEY,
District Clerk.

No. 7. Second Order of Reference.

The circuit court met according to adjournment, 23d June, 1834. Present his honor Thomas Lee.

A. M. HOBBY AND THOS. P. BOND, of Georgia
vs.
CHARLES MCINTYRE.

Ordered on motion of M. King defendant's solicitor that the accounts of the defendant in this case, be and are hereby referred to the register to examine and report thereon.

UNITED STATES CIRCUIT COURT,
South Carolina District.

HOBBY & BOND
vs.
KELSEY & MCINTYRE. } In Equity.

Ordered that the parties interested in this case do appear at the

United States court room on Tuesday the 1st of September, at 12 o'clock, under an order of reference made 23d June, 1834.
22d August, 1835.

JAMES JERVEY,
District Clerk.

No. 8.

Pleadings in an Action of Covenant.

THE STATE OF SOUTH CAROLINA, *Charleston District,*
In the Common Pleas.

ALFRED M. HOBBY
vs.
CHARLES KELSEY and
CHARLES MCINTYRE.

} Declaration in Covenant.
Damages $13,200.

Charles Kelsey and Charles McIntyre who are absent from the State aforesaid were attached by their lands, tenements, monies, goods, chattels, debts and books of account, to answer to Alfred M. Hobby in a plea for breach of covenant. Whereupon the said Alfred M. Hobby by Pettigru & Lesesue, his attorneys, complain that whereas heretofore, and before the making of the agreement hereinafter mentioned the said Charles Kelsey, Charles McIntyre and Alfred M. Hobby, were copartners in trade carrying on the business of merchants at Savannah in the State of Georgia, under the firm of C. Kelsey & Company, and the said copartners being possessed of and entitled to monies and effects to a large amount on the ninth day of February which was in the year one thousand eight hundred and twenty-two, agreed to dissolve the said partnership, and by a certain agreement then and there made by and between the said Alfred M. Hobby of the first part, and the said Charles Kelsey and Charles McIntyre of the second part, it was witnessed as follows that is to say—that the said Alfred M. Hobby did agree to withdraw from the said firm upon the following conditions viz: that the said parties of the second part were to take upon themselves the entire settlement of the business of said firm, and were to pay to the said Alfred M. Hobby, after the debts of the said firm were all paid and discharged and a sufficient sum collected out of the debts then due to the said firm five thousand, five hundred dollars, and in Bridge bills whenever he should demand them, one thousand one hundred and thirty dollars. And the said Alfred M. Hobby for and in consideration of the above sums of money to be paid, and the further sum of one dollar to him in hand paid, the receipt whereof is thereby acknowledged, relinquished and did transfer to the said parties of the second part, all his interest or claims of whatever nature, he had or might have as a partner in the said firm. It was also stipulated and agreed that the

said Alfred M. Hobby of the first part in consideration as above specified, was to protect the said parties of the second part from a certain judgment obtained against said firm by the branch of the United States Bank in the city of Savannah aforesaid, and to hold them harmless from any balance should there be any due after the conclusion of the settlement between John McKinne and Thomas Gardner respecting the said judgment. And for the faithful discharge of the said agreement the said parties bound themselves their heirs, executors administrators or assigns, as by the said agreement sealed with the seals of the said parties, which the said Alfred M. Hobby now brings into court, reference being thereunto had will more fully appear; by virtue of which said agreement, the said Charles Kelsey and Charles McIntyre became and were possessed and had the benefit of all the assets of the said partnership. And the said Alfred M. Hobby in fact says that he the said Alfred M. Hobby, hath always, from the time of making the said agreement well and truly performed fulfilled and kept all things in the said agreement contained on his part to be performed, fulfilled and kept, and although the said Charles Kelsey and Charles McIntyre have or without wilful default or culpable neglect might have collected a sufficient sum to pay to the said Alfred M. Hobby, the five thousand five hundred dollars, agreed to be paid by the said agreement, yet they the said Charles Kelsey and Charles McIntyre, although often required have not delivered to the said Alfred M. Hobby the Bridge bills mentioned in the said agreement nor any Bridge bills, nor paid to the said Alfred M. Hobby the five thousand five hundred dollars, which by the said agreement, they the said Charles Kelsey and Charles McIntyre, are bound to pay to the said Alfred M. Hobby, nor any part thereof, contrary to the tenor and effect of the said agreement in that behalf made, to wit, at Charleston in the State aforesaid, to the damage of the said Alfred M. Hobby thirteen thousand two hundred dollars, and therefore he brings suit and so forth.

PETIGRU & LESESUE,
Plaintiff's Attorneys.

Copy—Agreement.

Articles of agreement entered into at the dissolution of the firm of C. Kelsey & Co., between Alfred M. Hobby of the first part, and Charles Kelsey, and Charles McIntyre of the second part: Witnesseth that the said Alfred M. Hobby, doth agree to withdraw from the said firm upon the following conditions, viz: That the said parties of the second part, are to take upon themselves the entire settlement of the business of said firm, and are to pay to the said A. M. Hobby, after the debts of the said firm are all paid and discharged, and a sufficient sum collected out of the debts now due to the said firm, five thousand five hundred dollars, and in Bridge bills, whenever he shall demand them one thousand, one hundred

and thirty dollars. And the said A. M. Hobby, for and in consideration of the above sums of money to be paid, and the further sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, hath relinquished, and by these presents doth transfer to the said parties of the second part all his interest or claims of whatever nature he has or may have as a partner in the said firm. It is also stipulated and agreed that the said A. M. Hobby of the first part in consideration as above specified, is to protect the said parties of the second part from a certain judgment obtained against said firm, by the branch of the United States Bank in this city, and to hold them harmless from any balance, should there be any due, after the conclusion of the settlement between John McKinne and Thomas Gardner respecting the said judgment. And for the faithful discharge of this agreement, we bind ourselves, our heirs, executors, administrators or assigns.

Witness our hands and seals this ninth day of February, one thousand eight hundred and twenty-two.

Signed A. M. HOBBY, [L. S.]
CHAS. KELSEY, [L. S.]
CHAS. McINTIRE. [L. S.]

Signed in presence of JAMES W. TAYLOR.

Thomas P. Bond attorney of A. M. Hobby maketh oath and says that he is acquainted with and interested in this case. That the defendants have violated their agreement with the plaintiff A. M. Hobby, and have not delivered or paid the Bridge bills, nor the money which they are bound by the foregoing agreement to pay and deliver to him. That the plaintiff A. M. Hobby has performed the agreement aforesaid on his part, and that the defendants are justly liable to the said plaintiff, for the breach of the said agreement.

T. P. BOND.

Sworn to before me this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and thirty-six.

ELIAS FORT, *J. J. C. C C.*

Filed 2d November, 1836.

ALFRED M. HOBBY *vs.* CHAS. KELSEY and CHAS. McINTYRE. } In the Common Pleas. Plea.

And the said Charles Kelsey and Charles McIntyre by their attornies King and Walker, come and defend the wrong and injury when and so forth and say that they have not broken their covenants aforesaid, nor any of them, in manner and form as the said plaintiff hath above thereof against him complained and of this he puts himself upon his country and so forth.

And for a further plea in this behalf, as to the said supposed breach of covenant secondly above assigned the said defendants

by leave of the court, here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the plaintiff ought not to have or maintain his aforesaid action thereof against them because they say that in and by the agreement of which profert has been made by the plaintiff, it was covenanted and agreed among other things, that the said defendants are to pay to the said A. M. Hobby" (to wit the plaintiff) "after the debts of the said firm are all paid and discharged, and a sufficient sum collected out of the debts now due to the said firm, five thousand, five hundred dollars." And they the said defendants aver that out of the debts due and owing to the firm mentioned in the said agreement that a sufficient sum has not been collected by them or either of them, or by their or either of their agents, to pay the debts due and owing by the said firm to their creditors, although they have used every exertion for the accomplishment of that intention. And of this the said defendants put themselves upon the country and so forth.

And for a further plea in this behalf as to the said supposed breach of covenant thirdly above assigned the said defendants by leave of the court, here for this purpose first had and obtained according to the form of the statute in that case made and provided say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that as to so much of the breach of covenants mentioned in his declaration, as refers to the Bridge bills mentioned in the said agreement, that he the said plaintiff has not protected the said defendants against the judgment held against the firm by the branch Bank of the United States in Savannah according to their mutual agreement, of which profert has been made by the said plaintiff. And of this they put themselves upon the country and so forth.

KING & WALKER,
Defendant's Attorneys.

Filed 30th Dec. 1836.

ALFRED M. HOBBY *vs.* CHARLES KELSEY & CHARLES MCINTYRE. } In the Common Pleas. Demurrer to Pleas.

And the said Alfred M. Hobby by his attorneys Petigru and Lesesue comes and says that he by any thing in defendant's plea first pleaded to his declaration, ought not to be barred from having and maintaining his said action because he says that the said plea is not sufficient in law, to prevent him from having his said action against them, and that he is not bound by the law of the land to answer to it, and this he is ready to verify.

Wherefore for want of a sufficient plea in this behalf the said Alfred M. Hobby prays judgment and his damages by reason of the

non-performing of the several promises and undertakings, in the said declaration mentioned to be adjudged to him. And for causes of demurrer the said Alfred M. Hobby states and shews to the court, the following that is to say.

That the breaches alleged in the declaration are in the negative viz, that the said defendants did not pay the money nor deliver the Bridge bills therein mentioned: and that the said plea is in the negative also, and that no proper issue can be taken thereon, and that the said defendants have not thereby shewn in what manner they have kept their covenant.

And as to the second plea, by the said defendants above pleaded, the said Alfred M. Hobby says, that he by any thing therein contained ought not to be barred from his action aforesaid and that he is not bound to answer to the same and this he is ready to verify.

Wherefore for want of a sufficient plea in this behalf, the said Alfred M. Hobby, prays his damages by him sustained by reason of the non-performance of the said covenants to be adjudged him. And for causes of demurrer to the said second plea, the said Alfred M. Hobby sets down and shews the following that is to say, that the breaches assigned in the said declaration, are in the negative to wit, that the defendants did not pay the sum of five thousand, five hundred dollars nor deliver the Bridge bills mentioned in the said declaration; and that the said last mentioned plea is in the negative also, viz, that the assets of the partnership did not amount to enough to pay the debts and is not issuable.

That the said second plea does not show a performance of the covenant of the defendants, nor how the said covenant was performed; but is only argumentative, and is pleaded to the whole declaration, but goes to a part of the declaration only, and that the said plea is in other respects informal uncertain and insufficient.

And as to the third plea by the said defendants pleaded, the said Alfred M. Hobby says that he, by any thing therein contained, ought not to be barred from having and maintaining his said action against the said defendants because he says that the said third plea and the matters therein contained, are not sufficient in law to bar or preclude him the said Alfred M. Hobby, from having his action aforesaid against them, and that he is not bound to answer thereto, and this he is ready to verify.

Wherefore for want of a sufficient plea in this behalf, the said Alfred M. Hobby prays judgment and his damages by reason of the non-performing of the covenants aforesaid, to be adjudged him.

PETIGRU & LESESUE,
Plaintiffs' Attorneys.

Filed 3d Jan. 1837.

ALFRED M. HOBBY, *vs.* CHS. MCINTYRE and CHS. KELSEY. } In the Common Pleas.—Joinder in Demesne.

And the said defendants say that their said pleas by them first above pleaded and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against them the said defendants, and the said defendants are ready to verify and prove the same when where and in such manner as the said court here shall direct and award. Wherefore inasmuch as the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining their aforesaid action thereof against the said defendants and so forth.

And the said defendants say that their plea by them secondly above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against them the said defendants, and the said defendants are ready to verify and prove the same, when where and in such manner as the said court here shall direct and award. Wherefore inasmuch as the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining their aforesaid action thereof against the said defendant and so forth.

And the said defendants say that their plea by them thirdly above pleaded and the matters therein contained in manner and form as the same are above pleaded and set forth are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against them the said defendants, and the said defendants are ready to verify and prove the same, when where and in such manner as the said court here shall direct and award. Wherefore inasmuch as the said plaintiff hath not answered the said plea nor hitherto in any manner denied the same, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining their aforesaid action thereof against the said defendants and so forth.

KING & WALKER,
Deft's Sol'rs.

Filed, 9 January, 1837.

No 9. *Separate Answer of Charles Kelsey.*

A. M. Hobby and Thos. P. Bond
vs.
Charles Kelsey, & Charles McIntire. } In Chancery.

United States of America,
District of South Carolina, Circuit Court.

In Equity.

The separate answer of Charles Kelsey impleaded with Charles McIntyre defendants, to the bill of complaint of Alfred M. Hobby and Thomas P. Bond, complainants.

This defendant now and at all times hereafter, saving and reserving all and all manner of exception to the many errors, uncertainties and insufficiencies in the complainants bill of complaint contained for answer thereto or to so much thereof, as he is advised it is material or necessary for him to make answer unto, answering says that he admits that the complainant Alfred M. Hobby and the said Charles McIntyre and himself, carried on business in the State of Georgia as co-partners under the name and firm of C. Kelsey & Co. as is set forth in the said bill of complaint, which co-partnership was formed in or about the year one thousand eight hundred and nineteen.

And this defendant further says that before the formation of the said co-partnership, the said Alfred M. Hobby and this defendant had been in business together as co-partners, and that upon the formation of the said new firm in which the said Charles McIntyre became a partner, the business of the said former firm was transferred to and became merged in the business of the said new firm.

And this defendant further admits that upon the dissolution of the said new firm on or about the 9th day of February in the year 1822, the agreement was entered into by the said co-partners, which is set forth in the said bill of complaint, and that thereupon the said Charles McIntyre, and this defendant pursuant to the terms of the said agreement, took upon themselves the settlement of the business of the said firm.

And this defendant furthur answering says that the said Charles McIntyre and himself have diligently and faithfully attended to the settlement of the business of the said firm, in collecting the debts due to the said firm, and realizing the other assets of the said firm and in the payment of the debts due from them, and that such settlement has been necessarily attended with expenses incurred in travelling for the collection of debts, clerk-hire, office rent, postages, commissions, and in various other ways, incidental to the settlement of such a business.

And this defendant further says the debts due from the said firm amounted to a large sum of money as hereinafter more particularly stated. And many of the debts due to them were bad and not

collectable, and that they have not realized from the assets of the said firm sufficient to pay the debts of the said firm, and the expenses of settling the said business, and that the said Charles McIntyre, and this defendant are in advance to the said firm a considerable sum of money beyond what they have received from the assets of the said firm. And that when the bill of complaint was filed in this cause they were still further in advance for the said firm.

And this defendant further says that he has examined an account or schedule annexed to the answer of the said Charles McIntyre in this cause and marked A, shewing the debts due to and the goods and other assets of the said firm at the time of their said dissolution, and also shewing the debts due by the said firm, and also a further schedule shewing other debts due from the said firm, being the latter part of schedule B, annexed to the said answer of the said Charles McIntyre on file in this cause. And that he has also examined that part of the said schedule marked B, and a further schedule annexed to the supplemental answer of the said Charles McIntyre also on file in this cause, shewing what has been done by these defendants in the collection of the debts of the said firm, and in bringing the other assets of the said firm into money, and that the said schedules are correct, to the best of the knowledge information and belief of this defendant, and he craves leave without repeating the same to refer to the said schedule on file with the answer of the said Charles McIntyre, as part of the answer of this defendant. But this defendant further says that in adjusting the said partnership account, there are certain charges and expenses incurred by the said Charles McIntyre and himself in settling the said business, which are to be deducted from the gross receipts expressed in the said schedules; that there is a balance of interest to be charged against the said estate the amount of which will appear upon the computation being made upon the receipts and payments: that there was the sum of 159 dollars 25 cents paid to Thaddeus Phelps of New York over and above the debt stated in said schedules and which the said firm justly owed to the said T. Phelps & Co. That in paying the debts due by the said firm in New York, amounting to about fourteen thousand seven hundred dollars, they had to pay the difference of exchanges or cost of remittance, which was not less than five per cent. and which amount to the sum of seven hundred dollars and upwards. That the debts collected by them were necessarily in uncurrent money which was at an average discount of at least 2½ per cent. making the sum so lost on uncurrent money, seven hundred and eighty-eight dollars twenty three cents: That the expense of office rent was at least eight hundred dollars; of necessary travelling expenses in the bnsiness of the said firm not less than five hundred dollars; of clerk hire five hundred dollars; of postages in necessary correspondence about the said business not less than

three hundred dollars; expenses on the debt of F. H. Nicholls seventy-five dollars, besides further incidental expenses as this defendant believes not above enumerated.

And this defendant further claims that the said Charles McIntyre and himself are entitled to charge a commission of at least two and a half per cent. upon the amount of money so collected and paid out by them in the business of the said firm, for their time und trouble in the said business, for which the said commission would be a very inadequate recompense.

And this defendant further answering says, that not having received sufficient from the said estate to pay the debts and expenses of the said estate, he submits to this honorable court that the complainant Alfred M. Hobby is not, nor is any one claiming under him entitled to receive from or demand of the defendants, any part of the said sum of five thousand five hundred dollars mentioned in the said agreement and to be paid if at all out of the assets of the said firm, if the said Hobby or his assigns whould be entitled thereto, had sufficient been realized, which this defendant claims he would not be.

And this defendant further answering says, that the books of the said firm, and the accounts of the transactions of the defendants in settling the said business, have always been subject to the examination of the complainant Alfred M. Hobby and the defendants have always been ready to give him all the information in their power in relation thereto.

And this defendant further says in regard to the Bridge bills mentioned in the said agreement, altho' he by no means admits the right of the complainant Alfred M. Hobby to receive the same, yet he says that no demand has ever been made upon him therefor—that they with the knowledge of the said Hobby were long ago put in suit, and but little if any thing has been collected thereon, and nothing received from them by the defendants.

And this defendant further says that although the defendants have in all respects performed all things incumbent on them to perform, yet he says that the complainant Alfred M. Hobby has wholly neglected and failed to protect the defendants against the judgment mentioned in the said agreement—that after the said agreement was entered into, an execution was issued upon the said judgment for more than 20,000 dollars, and levied upon the property of the defendants: That the defendants were compelled to file a bill in equity to set aside the said levy, and to obtain an injunction and prevent the sale of their property on the said execution, and they had to give security to a large amount sufficient to make the amount of the execution secure, before they could go on with their business—that they were not relieved from the said claim and execution until after several years litigation at great expense and great trouble and loss of time—that they were greatly harassed, and their credit shaken by reason of the levy of the said execution,

and continuance of said claim, during all which time they were holden under the security aforesaid.

And this defendant submits, that the said Alfred M. Hobby by reason of the failure on his part to protect the defendants against the said judgment has forfeited all claim to call upon the defendants, under the said agreement—and that any contingent interest which he or his assigns might have in any event under the said agreement, is liable for the expenses incurred and injury sustained by the defendants in consequence of the proceedings on the said judgment.

And this defendant further answering says that he is wholly ignorant in relation to any transfer of the said agreement by the said Alfred M. Hobby, to the complainant Thomas P. Bond, but he submits that the said Thomas P. Bond can stand in no better condition in relation thereto, than the said Alfred M. Hobby.

And this defendant further says that he has never refused or been requested by the complainants or either of them to come to account relative to the business and affairs of the said firm: And that he has never refused or been requested by them or either of them to deliver the said Bridge bills. That had he been so requested, he should, as he has at all times been ready to do, have given the complainant Alfred M. Hobby, and the said Thomas P. Bond on his showing his right to call for the same, all the information, and all accounts in relation to the said business that could reasonably be required.

And this defendant denies all unlawful combination and confederacy in the said bill charged, without that there is any other matter or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided traversed or denied is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver maintain and prove, as this honorable court may direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most unjustly sustained.

Dated December 13th, 1837.

C. KELSEY.

STATE OF NEW YORK, *Southern District of New York.*

On this fourteenth of December, 1837, before me came Charles Kelsey, who has subscribed the foregoing answer, and made oath that the said answer has been read to him, and that he knows the contents thereof. And that the same is true to the best of his knowledge information and belief.

SMITH THOMPSON,
One of the Judges of the Supreme Court U. S.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

I, Frederick J. Betts, clerk of the circuit court of the United States for the southern district of New York in the second circuit, do hereby certify that the Honorable Smith Thompson, whose name in his own proper handwriting is subscribed to the foregoing jurat was, at the time of subscribing the same, one of the judges of the Supreme Court of the United States.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court this fourteenth day of December A. D. one thousand eight hundred and thirty-seven. [L. S.]

FRED. J. BETTS, *Clerk.*

Filed 10th January 1838.

KING, *Defends. Sol.*

No. 10.

Supplemental Answer of C. McIntire with Exhibit C.

THE UNITED STATES OF AMERICA, *South Carolina District.*

In Equity.

A. M. HOBBY AND THOS. P. BOND, *vs.* CHS. KELSEY AND CHS. MCINTIRE. } Sup. answer of Chs. McIntire.

The supplemental answer of Chs. McIntire one of the defendants to the bill of complaint of Alfred M. Hobby, and Thomas P. Bond complainants.

This defendant saving and reserving to himself all and all manner of benefit and advantage of exception to the errors and insufficiencies in the complainants said bill of complaint contained—by way of supplemental answer to the answer in this case already made by him which he hereby in all things recognizes and confirms further answers to the said bill of complaint and says that since his former answer was filed in this case on the seventh day of April, in the year of our Lord one thousand eight hundred and thirty, to wit, on or about the twentieth day of December, in the same year, he this defendant received on accouut of the dissolved firm of Charles Kelsey and Company the sum of three hundred and fifteen dollars twenty-nine cents by a note at sixty days, and on or about the — day of January, eighteen hundred thirty-one, the further sum of thirteen hundred and eighty-nine dollars, and some short time thereafter to wit, about the sixth day of April, eighteen hundred and thirty-one, he this defendant furnished to his solicitor a statement of the said amounts so received by him this defendant, that the same might be brought into the accounts of the said firm, as before stated by this defendant in the Exhibits A and B, filed by

him with his said former answer, and a copy of the said statement so furnished by this defendant to his said solicitor is herewith filed as Exhibit C, and to it all necessary reference is craved.

And this defendent further says that his co-defendant Charles Kelsey has made answer to said bill of complaint, and in addition to the items contained in the exhibits made by this defendant has claimed as due from the dissolved firm of Charles Kelsey and Company, certain charges for exchanges, postages, commissions and other expenditures amounting to four thousand nine hundred and thirty-eight dollars and sixty cents, which this defendant confirms, and to which he begs reference.

The answer of his co-defendant Charles Kelsey thus referred to is dated on or about the thirteenth day of December eighteen hundred thirty-seven.

And this defendant alleges and says that he has always been and is now willing and anxious to have this dispute finally settled, and denying all combination and confederacy he prays to be dismissed with his costs and charges wrongfully sustained.

CHARLES McINTIRE.

Personally appeared the defendant Charles McIntire, whose name is attached to this supplemental answer to the bill of complaint of A. M. Hobby and Thomas P. Bond, and who being sworn testifies that the statements set forth therein, are true to the best of his knowledge and belief.

Sworn before me on this 19th day of December, A. D. 1837.

JOS. HOPKINSON,
Judge of the D. C. of the U. S. for the E. D. of Penn.

UNITED STATES, *Eastern District Penn.*

I certify that the honorable Joseph Hopkinson before whom the within Charles McIntire appeared and made oath to the truth of the within answer and who has subscribed the foregoing certificate thereof, was at the time of administering said oath and subscribing said certificate, and still is, judge of the district court of the United States for the eastern district of Pennsylvania duly commissioned and qualified.

Witness my hand and the seal of said district court of Philadelphia this nineteenth day of December, A. D. 1837, and in the sixty-second year of the Independence of the said United States.

[L. S.]

FRAS. HOPKINSON,
Clerk District Court.

Filed 10th January, 1838.

KING, *Def. Sol.*

Exhibit C.

I beg leave to add to my answer to the bill of complaint of A. M. Hobby and Thomas P. Bond, the following items received since said answer was first given.

Received 20th December, 1830, from sale of land in Bibb county, Georgia, to Charles Reid of Savannah, per note at sixty days - - - - -	315 29
Received in January, 1831, per A. G. Safford, in assd. estate of John Tanner - - - - -	1,389 00
	$1,704 29

CHARLESTON, *April* 6, 1831.
Signed CHARLES McINTIRE.

No. 11.—*Replication.*

UNITED STATES OF AMERICA, *Sixth Circuit S. Carolina District.*

Between ALFRED M. HOBBY AND THOMAS P. BOND, Complainants.
and
CHARLES KELSEY AND CHARLES McINTIRE, Defendants.
} In Equity.

The replication of Alfred M. Hobby and Thomas P. Bond, complainants, to the answers of Charles Kelsey and Charles McIntire, defendants.

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication thereunto say, that they will aver and prove their said bill to be true certain and sufficient in the law to be answered unto, and that the said answers of the defendants are uncertain untrue and insufficient in law to be replied unto by these repliants without that, that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct and humbly pray as in and by their said bill thay have already prayed.

PETIGRU & LESESUE,
Complainants' Sols.

Filed January 7th, 1838.

No. 12.

Order of Reference and Summons.

UNITED STATES OF AMERICA, *South Carolina District Sixth Circuit.*

In Equity.

The circuit court met according to adjournment. Present: His honor Thomas Lee. Monday, 23d April, 1838.

A. M. HOBBY and others
vs.
CHS. MCINTIRE and CHS. KELSEY.

It is ordered that the defendants do account to the complainant for the sum of eleven hundred and thirty dollars ($1,130) in Bridge bills according to the agreement made between the parties dated February 9, 1822. And that the clerk of this court take an account of the assets of the firm of Kelsey & Co. that came to the hands of the defendants, on the dissolution of the concern, and of the debts which the defendants have paid.

DISTRICT CLERK'S OFFICE, *South Carolina District*,
May 11*th*, 1838.

In obedience to the above order, the clerk hereby notifies the parties interested that he will proceed in the matters therein referred, on Saturday, the 12th instant, at 4 o'clock P. M., at the office of Jervey Waring & White, Broad street.

JAMES JERVEY,
District Clerk.

No. 13.

Testimony Reported by the Register.

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } Equity. Reference.

May 12, 1838. Mr. Petigru complainant, Mr. King defendant.

Geo. H. Kelsey sworn. Was clerk to the concern of K. & McI. in 1822; in the habit of attending to their business, knew of the books of the concern of C. K. & Co., when Mr. McI. left here, they were in witness' charge, they and the papers connected with the concern were in two large trunks in the third story of the building No. 271 in King street at the time of the fire of the 27th April—believes they were burnt—has tried to find them but has seen none

except the letter book—does not believe that Charles Kelsey saw the books, or knew where they were. Mr. McIntire principally attended to the collection of the debts. Witness collected one from A. G. Safford, amount $1,389. Mr. McI. was very attentive, believes he neglected nothing, knows he went into Georgia to attend to the business of the concern, no other person attended to the accounts. K. & McI. paid $600 a year in Savannah after the dissolution, where the affairs of the concern were attended to. I think it was rented for one year at least. Should suppose that a rent of $150 would be the very least for a suitable place to attend to the business of such a concern. Supposes that it would take four or five years to wind it up, does not know what either of the parties brought into the concern—if the books did show never saw it—the firm was dissolved before witness came to Savannah—never saw Hobby to know him until the other day—went to Savannah October, 1822. Kelsey & McIntire were there in business as merchants. K. & McI. did their business as merchants in the store, to which allusion is made above as having been hired at $600. There was no house specially kept for Hobby's business. Mr. McI. went into the country on business, but does not know whether it was only on the business of the concern, his errand was to collect debts or secure them, does not know whether he went after H.'s debts, or his own specially; he was at the time engaged in winding up the concern. Mr. McI. kept one clerk and myself. Witness did not attend particularly to H.'s business, does not know that any clerk was employed for H.'s business—thinks that it required more than the services necessary for the business of the existing concern, to wind up the affairs of the old concern. One-fifth of the salary of the clerk would be a fair charge to attend to the business of H. & K. An average salary of $800. Witness received from $300 to $500. Was the junior clerk, had little knowledge of the business—before the business was wound up. Witness received $800. The average of postage to close such a concern would be $75 per year, for a series of seven years, would charge for travelling expenses from $1,200 to $1,500 to wind up the business of such a concern taking as long as has been necessary, computing seven years as the period. Should think $1,000 would be a proper charge for incidental expenses other than those enumerated. Thinks 2½ per cent. a low charge for commissions on settling such a concern. Witness has charged more—this independent of the enumerated charges and expenses.

In 1823 witness was very young, and knew little of their business—has seen letters and copied them from K. & Co. to merchants in New York, in which they stated what they paid for exchange. Witness has the letter book—never saw any entry containing a statement of the loss on uncurrent bills—never saw any charge against H. & McI. for office rent, after the dissolution—never saw any account for travelling expenses, nor for clerk hire; nor postages specially to that concern; nor any account of incidental

expenses, nor any commission account that he recollects. Don't know that K. & McI. brought into their concern the goods, cash, &c. of H. K. & McI., thinks they had in part the opportunity of connecting the old business with their new transactions—one connected with an old concern winds it up with less difficulty than a stranger, never knew of any journey of Mr. McI. on business of H. alone. I was sent from Charleston into Georgia in part to attend to H.'s business, to collect Saffold's debt—it was the main object—don't recollect what was collected from others. Saffold lived at Madison, Morgan county, Georgia, on that occasion took a tour through the State—collecting money—saw persons in various places, did not go directly to Morgan county and return. Witness thinks it likely he would have been sent, or some other person, even if there had been no money to collect from Saffold. I have no doubt that office rent was chargeable, as also all the other enumerated charges. Witness thinks McI.'s expenses would not have been as great, but for the settlement of H.'s business. Mr. McI. would have done as good a business without any connection with the old concern, thinks the business of the new concern was a decided advantage to the winding up of the old business, even encumbered with all the charges above enumerated.

The defendant C. K. by his solicitor tendered and delivered to the clerk in compliance (as asserted) with the agreement $1,150 in Bridge bills which are in judgment entered 20th March, 1824, in the case of Sol. Kneeland vs. McKinne & Schultz, and assigned by S. K. to K. & McI.; with an assignment by C. K. of so much of the judgment as will cover those bills. Whatever moneys have been recovered under the judgment are believed to be in the hands of Mr. Terry, commissioner in equity, Edgefield district—none in K. or McI.'s hands.

The solicitor for complainants, Mr. Petigru, refused to accept the tender.

Meeting at the United States Court Room.

MONDAY, 14*th May*, 1838.

George H. Kelsey, produced a letter book, and being sworn says that it is the letter book of C. K. & Co. commencing 2d December 1819, and ending 19th September 1823, partly during the period of the old concern. Many of the letters were copied into the said book by the witness—from the correspondence it appeared that the premium of exchange on New York was, during a part of the above period from 3 to 7½ per cent. at 60 days. Meeting adjourned to 14th June.

3d meeting Thursday 14 June, nothing done.

4th meeting 15th June.

George Gibbon sworn: the premium of exchange is charged on fixing the price of the goods—this depends however on the state

of the market in relation to goods, if a person has purchased goods and sold before exchange rises, of course he would not have the benefit of the exchange. A merchant in Savannah having to pay a debt in New York has a right to charge the premium of exchange, accounts between copartners, the statements should be in detail—this is my opinion—should suppose there ought to be a detailed account of receipts and expenditures—was in the South in 1822 can't tell without reference to books, what was the rate of exchange then—Savannah papers would shew.

*Stock taken at a price on dissolution of partnership there is no need to give a statement of profits.

* * It appears inconsistent that the same rule should not apply to debts when amount is stated or ascertained modes of settlement usual as witness believes—pay the debts and divide the balance, or value fixed, and one party gives bond to pay the debts—difficult to say what is the custom—different persons will settle in different ways—scarcely two persons settle in the same way.

No. 14.—*Letters respecting the rate of Exchange.*

SAVANNAH, 15*th May*, 1822.

Messrs. J. PHELPS & Co.,

Dear Sirs: Enclosed we send you Mr. F. Sellecks draft on Messrs. Charter & Williams, for twelve hundred dollars at sixty days, when our Mr. K. was in your city, and before our account was rendered, he had made a partial arrangement with Messrs. F. & H. Sheldon & Co. for some goods, which it was then uncertain if they could send, and as it was a very considerable object to get as long a time as possible on a part of our purchases he agreed to give a draft on you at nine months in case they should send the goods, and as the goods have been received by us, we have accordingly drawn on you for 876 dollars 50 cents, the amount of invoice at nine months, which you will much oblige us by accepting, but although it would be a very great accommodation to us to have this time to pay this amount in, if it should not be agreeable to you to accept, you will please pay the amount of our draft, after deducting the interest out of this, on Messrs. Charter & Williams, and we will in that case make our remittances for our July payments independent of this draft. As Messrs. F. & H. S. & Co. will not, like many of the dry good merchants want in all probability, to use this paper, until just before it becomes due if at all, the obligation as to him is not so great as with many. Exchange on your place has been up to 6 per cent. for 60 day bills but is declining we bought to day for 4 per cent. Your favor of the 24th ultimo, is now duly honored with us, also the one of the 3d instant. As to our cotton, we can only say that you must use your discretion about it, we rely on your judgment and shall be satisfied with whatever course you may think it for our interest to pursue.

Respectfully yours,

C. KELSEY & Co.

SAVANNAH, 15*th May*, 1822.

Messrs. ROBERT JAFFRAY & Co.,

Gentlemen: Your letter of the 3d instant, enclosing a check on the State Bank for $596 91, was duly received and paid. Until to-day we could not buy a bill to please us as 6 and 6 and ¼ per cent. was the general asking price. We now enclose you F. Sellecks draft at 60 days on Charter & Williams for $573 95 to which add 4 per cent. the premium paid $22 95 and you have the amount of the check forwarded to us. This is the best terms on which bills can be bought, we have paid the same ourselves to day for $1,200. Of your laces we can hear nothing in this part of the country. We hope you may yet be so fortunate as to recover them.

Very respectfully, your obedient servant,

C. KELSEY & Co.

SAVANNAH, *May 20th*, 1822.

Messrs. HAINS, JOHNSON & Co.,

Gentlemen: Your letter of the 10th instant we received this morning enclosing draft on James Morrison Esq. for $1,200—which was presented, and after some hesitation excepted. He says he is not yet in funds and thinks it doubtful whether he will be able to pay it at maturity, but that he can pay it in a few days after. We are of opinion that it will not be paid when due, but think it probable that he will exert himself to pay it soon. It shall be regularly protested if not paid, so as to secure damages to you, if the bill is returned. If not paid we will hold it until we hear from you—upon the receipt of this please advise us what course to pursue. Bills on New York at sight 5 to 6 per cent. premium.

Very respectfully yours,

C. KELSEY & Co.

SAVANNAH, 24*th May*, 1822.

Mr. WM. MONKS,

Dear Sir: On the other side you will find a statement of the sale of 21 barrels porter by Messrs. J. B. Herbert & Co.—one barrel yet remaining on hand—when sold the proceeds will be sent you.

We could not sell at private sale, and auction was the only mode of disposing of the article. The delay of sales was with the hope that better prices could be obtained; that expectation has not been realized, but the best has been done for you. As the business was undertaken only with a view to oblige you, we have charged no commissions, and have to express our regret that a price so far below your expectations has been realized. Enclosed you have a check for $52 52 cents the nett amount after deducting the current exchange 6 per cent.

Respectfully yours,

C. KELSEY & Co.

SAVANNAH, 18*th June*, 1822.

Messrs. HAINES, JOHNSON & Co.,

Gentlemen: We now enclose you A. L. Molyneaux's bill on Messrs. Le Roy, Bayard & Co., at one days' sight for $1,200. For this bill we had to give 5½ per cent. premium. The best 60 day bills are 4 per cent. The amount of premium $66 you will please place to our credit, and pay to a millinett manufacturer (whose name we do not know) $45, for 18 pieces millinett bought of him by Mr. Kelsey, when last in New York. Mr. K. says you are acquainted with the person above alluded to. We have had a very good spring business; our sales do not fall far short in amount of our purchases. We will soon remit you the amount we shall owe you in July.

Very respectfully,
Your obedient servant,
C. KELSEY & CO.

SAVANNAH, 26*th August*, 1822.

Dear Sir: Your favors of the 7th and 9th instants are received, the former covering bill of lading, per the brig Ceylon. The brig arrived yesterday, and is now discharging. The goods we shall ship by the boat Paragon, at one fourth less than customary. This is one of the smallest boats on the river, and draws only 18 inches—is partly loaded, and a full freight engaged; she will be off soon. Our city remains very healthy, and the weather fine; we do not a year, the summer of which has been more free from cases of fever than this has been; the writer is happy to hear that our friends are all well, and wishes to be remembered to them.

Repectfully, yours,
C. KELSEY & CO.

Cotton 10¼ to 11 cents; exchange New York, 5½ sight; cotton bagging 32 to 34. The following prices are what our jobbing merchants are asking and getting for groceries. With the exception only of iron, the last cargo of which sold at 98 dollars per ton, an assortment of which has been sent to Augusta; the assortment of sizes I think was good, we do not know what it would fetch now by the cargo.

C. K. & CO.

Sugar 9 to 11½, coffee 29—30, whiskey 38 gal., 36 bhd. H. gin 90, C. brandy $1 50, J. rum $1 10—$1 20, H. tea in chest $1 00, N. rum 40, N. gin 40.

SAVANNAH, 29 *August*, 1822.

Messrs. T. PHELPS & Co.,

Gentlemen: Above you have a certificate of deposit for two thousand dollars to your credit in the Planters bank in this city.

We are compelled to adopt this course, or give more than what we think is right for bills at long sight. We wish you to dispose of this to the best advantage to us, and place the proceeds to our credit. We have tried to procure a bill at even sixty days sight in preference to this course, but cannot procure one short of four months. We are informed that within a few days, Georgia bills have been sold with you at 4½ and 4¾ per cent. discount, if this should be the case, we shall be satisfied with the remittance. We have no doubt but that exchange will be more favorable for us soon, for several winters past it has been from par to 1 and 1½ premium. Mr. Kneeland quoted the bills to us at 5½ on the 9th instant.

At this season of the year, when a deposit of this kind can be made to any amount, to make it an object to raise the money in your city on the certificate, we think it would be to the interest of the parties to pay the interest in preference to losing much by an immediate sale of a check. Please let us know if an arrangement of this kind could not be made without inconvenience, and what your opinion is respecting the probable course of exchange in the winter.

Respectfully, yours,

C. KELSEY & CO.

Cotton 10½ to 14. Exchange on New York 4 per cent. a 60, the last sold for this—5 sight.

SAVANNAH, *24th September*, 1822.

Messrs. H. S. BLOODGOOD & Co.,

Gentlemen: Enclosed, we send you Messrs. Johnston and Hill's draft on Nevins & Townsend, for six hundred and seven dollars 25 cents, to meet our draft on you in favor of Mr. A. Blake, we should have sent this sooner but for the difficulty of obtaining drafts on your city. Exchange is now very much against us, say six per cent., and but one house of whom we can obtain them short of sixty days. We hope this may come in time to answer the draft.

Respectfully, yours,

C. KELSEY & CO.

SAVANNAH, *8th November*, 1822.

Messrs. THADDEUS PHELPS & Co..

Gentlemen: Enclosed you have Mr. G. Gordon's draft on yourselves at 60 days sight.

In favor C. Kelsey & Co., - - -	$1,267 39	
" Thomas Sufferen - - -	732 61	
		$2,000 00

The latter draft please accept, and hand over to Mr. Sufferen in payment for our notes to him, one due 4th instant - $265 91
" " 14th " - - 459 44
60 days interest - 7 26

$732 60

The other draft is intended to meet our payments now due to you, which, according to our estimate, is something less than $1,000. We wish you to pay to Messrs. Haines, Johnson & Co., $200, and to Clendenning & Bulkley $76 25. This money has not been remitted to you sooner for two reasons, the first because our Mr. Kelsey had made an error in his calculations of the amount due, the second because there has been so much difficulty in obtaining bills at a fair price, although we had the money to purchase. We should not now send a bill on yourselves, if others could be purchased, but we presume it will be no inconvenience to you (as Mr. Gordon assures us it will not) and it is so drawn as to be used if you desire it. The case of crapes, by the Superior, we have received, and will place the amount to your credit. The very warm weather has, in some measure, operated unfavorably to business. Our sales, so far, have been very fair. Will you please occasionally advise us of the state of the cotton market, sales have been made to day at 11 to 11½. Exchange on New York 3½ a 60 days.

Very respectfully,

C. K. & CO.

N. B. Please forward our account current.

SAVANNAH, *Nov.* 18*th*, 1822.

Messrs. HAINES, JOHNSON & Co.,

Gentlemen: Enclosed you have Johnston & Hills at 60 days sight on Boorman & Johnson for sixteen hundred dollars, which please have accepted and placed to our credit. We have directed Thaddeus Phelps & Co. to pay you two hundred dollars, and Haggerty and Austin were to pay you between $50 and $60—the proceeds of some spotted silks sold by them. These sums we presume are sufficient to discharge our spring bills. Should there be a balance in your favor after our account is made out, let us know, and we will discharge it. We would have made this remittance sooner, but bills have been scarce and high and still continue so. Our cotton market has opened at 10½ to 11½, which we suppose will be about the average price through the season. Business has been good, but is now dull, unusually so for the season. There are two reasons for this, one the low price of cotton, the other the extreme warm weather; as our people are not in the habit of providing for winter before they actually feel it. Bills on New York, 60 days, 4 per cent.

Very respectfully, your ob't serv'ts,

C. KELSEY & CO.

SAVANNAH, *Nov.* 18*th*, 1822.

Messrs. GEORGE BOWEN & Co.,

Gentlemen: Enclosed you have Johnson & Hill's dft. on Boorman & Johnston 60 days sight for twelve hundred thirty-four dollars 29 cents, to meet our note due 20–23 inst. The interest on note please charge to us, and we will settle the same when we again visit your city. The note please rec't and forward by water. Cotton 10¼ to 11½—bills on N. York sight 5½ to 6—60 days 3¾ to 4.

Very respectfully, your ob't serv'ts.

SAVANNAH, *Nov.* 20*th*, 1822.

Messrs. BOGERT & KNEELAND, N. York,

Gentlemen: By direction of S. Kneeland, Esq., of Augusta, and for his account, we have this day drawn on you for four thousand dollars in favor of Mr. George Irloe, at 60 days sight, which we trust you will accept, and which shall be duly provided for. This bill is disposed of here because exchange is 1 to 2 per cent. higher than in Augusta. We sold this bill for 4 per cent. premium. Our cotton market remains steady at 10½ to 11½.

Very respectfully, your ob't serv'ts.

SAVANNAH, *Nov.* 28*th*, 1822.

Messrs. THADD'S PHELPS & Co.,

Gentlemen: We have been endeavouring to obtain a dft. to remit you, to meet our dft. due 8th December, but cannot purchase one for less than 5 per cent. 60 days, unless such as we have no confidence in. Believing that cotton will make a better remittance, we shall ship by the first vessel a lot to meet all our payments due in December. The present price here is 11 to 11¼, and freight ¼ cent, and we cannot but think it will make a saving remittance. We hope a few days will be no material inconvenience to you. We received your letter of the 15th by the Howard. We were under the impression that the $2,000 had been sold when exchange was at 4 per cent., but we are perfectly satisfied that you took the course you thought most for our interest.

Very respecfully, your ob't serv'ts,

C. K. & CO.

SAVANNAH, *Dec.* 3*d*, 1822.

Messrs. T. PHELPS & Co.,

Gentlemen: We have this day completed a shipment of seventy-five bales upland cotton, by the ship Indus, at 10¾, freight $1 50 per bale. We expect she will sail to-morrow, and if so we will advise you as respects insurance. This cotton we wish sold immediately on its arrival, for the best price you can obtain. We received your letter of 21st ult. by the Augusta, with account current

The latter draft please accept, and hand over to Mr. Sufferen in payment for our notes to him, one due 4th instant - $265 91
" " 14th " - - 459 44
60 days interest - 7 26

$732 60

The other draft is intended to meet our payments now due to you, which, according to our estimate, is something less than $1,000. We wish you to pay to Messrs. Haines, Johnson & Co., $200, and to Clendenning & Bulkley $76 25. This money has not been remitted to you sooner for two reasons, the first because our Mr. Kelsey had made an error in his calculations of the amount due, the second because there has been so much difficulty in obtaining bills at a fair price, although we had the money to purchase. We should not now send a bill on yourselves, if others could be purchased, but we presume it will be no inconvenience to you (as Mr. Gordon assures us it will not) and it is so drawn as to be used if you desire it. The case of crapes, by the Superior, we have received, and will place the amount to your credit. The very warm weather has, in some measure, operated unfavorably to business. Our sales, so far, have been very fair. Will you please occasionally advise us of the state of the cotton market, sales have been made to day at 11 to 11½. Exchange on New York 3½ a 60 days.

Very respectfully,

C. K. & CO.

N. B. Please forward our account current.

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Gentlemen: Enclosed you have Johnston & Hills at 60 days sight on Boorman & Johnson for sixteen hundred dollars, which please have accepted and placed to our credit. We have directed Thaddeus Phelps & Co. to pay you two hundred dollars, and Haggerty and Austin were to pay you between $50 and $60—the proceeds of some spotted silks sold by them. These sums we presume are sufficient to discharge our spring bills. Should there be a balance in your favor after our account is made out, let us know, and we will discharge it. We would have made this remittance sooner, but bills have been scarce and high and still continue so. Our cotton market has opened at 10½ to 11½, which we suppose will be about the average price through the season. Business has been good, but is now dull, unusually so for the season. There are two reasons for this, one the low price of cotton, the other the extreme warm weather; as our people are not in the habit of providing for winter before they actually feel it. Bills on New York, 60 days, 4 per cent.

Very respectfully, your ob't serv'ts,

C. KELSEY & CO.

SAVANNAH, *Nov.* 18*th*, 1822.

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Very respectfully, your ob't serv'ts.

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Very respectfully, your ob't serv'ts.

SAVANNAH, *Nov.* 28*th*, 1822.

Messrs. THADD'S PHELPS & Co.,

Gentlemen: We have been endeavouring to obtain a dft. to remit you, to meet our dft. due 8th December, but cannot purchase one for less than 5 per cent. 60 days, unless such as we have no confidence in. Believing that cotton will make a better remittance, we shall ship by the first vessel a lot to meet all our payments due in December. The present price here is 11 to 11½, and freight ½ cent, and we cannot but think it will make a saving remittance. We hope a few days will be no material inconvenience to you. We received your letter of the 15th by the Howard. We were under the impression that the $2,000 had been sold when exchange was at 4 per cent., but we are perfectly satisfied that you took the course you thought most for our interest.

Very respecfully, your ob't serv'ts,

C. K. & CO.

SAVANNAH, *Dec.* 3*d*, 1822.

Messrs. T. PHELPS & Co.,

Gentlemen: We have this day completed a shipment of seventy-five bales upland cotton, by the ship Indus, at 10¾, freight $1 50 per bale. We expect she will sail to-morrow, and if so we will advise you as respects insurance. This cotton we wish sold immediately on its arrival, for the best price you can obtain. We received your letter of 21st ult. by the Augusta, with account current

enclosed. We have not yet had leisure to examine it. Cotton 10¾ to 12 for very prime. Exchange, 60 day bills, 4 to 5 premium.

V. R. Y. O. S.

SAVANNAH, *24th December*, 1822.

Mr. SOLOMON KNEELAND,

Dear Sir: Your favor of the 21st inst., covering Patroon's receipts for two hundred and fifty-five bales of cotton, came duly to hand. We shall ship as many as the Telegraph can carry, by that brig, she is hourly looked for; the wind is now favourable; now if she is not below, must soon be in; she will carry about two hundred bales; the balance we shall send by the first good vessel; the Niagara sails to-morrow. What will go by the T. is at ¾ per lb., but we fear, from the quantity now on the way to New York, we shall not be able to get the balance so low even as that; a great portion of the cargo of the late arrivals from your place is for that place. Our house received five hundred bales to be forwarded. We shall, as you request, advise Messrs. Bogert, Kneeland when we get the cotton on board. Cotton is not brisk in this market, it may be quoted at 10 or 12 cents; very little to be found that will command the latter price. Exchange 3½ on New York 60 days, some ask 4.

Sincerely yours.

N. B. The one receipt does not specify what it is for, though it has at bottom the weights and numbers of two hundred and five bales of cotton.

C. K. & Co.

SAVANNAH, 11*th January*, 1823.

Messrs. BOGERT & KNEELAND,

Gentlemen: Enclosed we send you a bill of lading for seventy-nine bales of cotton, on board of brig Levant, by request of Mr. S. Kneeland; the freight of this cotton has been engaged for some time, but owing to bad weather, we have not been able to get it dry enough to ship until now. The balance of the two hundred and fifty-five bales, which we presume you have been advised of being sent from Augusta, with the exception of one bale, will go on board the brig Telegraph; that one bale we have reason to think has been taken through mistake on board the Superior; she was outside the Levant while lading, and rolled her cargo over the Levant, and as some of this lot of cotton had various marks, some of which were very similar to what they were taking in, and some of it so nearly obliterated from so much exposure, it may have happened without any intention on the part of the officers of that ship. Will you oblige us so much as to endeavour to ascertain if it is on board of that ship? The Corsair, Superior, Levant, and Telegraph were all loading at the same time, and it must be on board of one of them, as we presume (though it may be) that it was not stolen. If you cannot find it, we shall pay Mr. Kneeland for it. There was a very large quantity of cotton on the wharf at the same time, and

in much confusion; it may have been taken by some person, with other lots in this place; but we think as all those vessels were loading very near together, that it is most likely that it is on board of one of them. We are advised of the shipment of one hundred and forty-five bales more, to be sent to you at ½ per cent. freight, but at present that cannot be done, nor do we think it likely that we shall soon be able to ship it short of ¾ per lb. Since the weather has settled there has been so much cotton offered for sale, that the market has been very dull, at from 9 to 12½, but it must be superior to command the latter price; in fact there is very little in market that will sell for that.

Respectfully yours, C. K. & Co.

Exchange on New York, 3½ 60 days; 5 per cent. at sight.

SAVANNAH, 18*th January*, 1823.

Messrs. HAINES, JOHNSON & Co.,

Gentlemen: Enclosed we send you Messrs. S. & M. Allen & Co.'s dft. on Messrs. S. & M. Allen of your city, for eight hundred dollars, at one day's sight, which please collect and place to our credit. We shall send you the balance of our dues to you in a few days; at present it is very difficult to get bills; few are drawing, and those at an extravagant rate of exchange. Cotton is now worth 10 to 12½ here; we at first thought of sending you enough to pay you, but the late accounts from your place are so unfavorable, that we preferred giving 6½ premium for a bill.

Sincerely yours, C. KELSEY & CO.

No. 15.

Evidence respecting Bridge Bills.

Received, Augusta, 2d May, 1822, from C. Kelsey & Co., by the hands of Solomon Kneeland, two thousand and ninety-eight dollars 25 cents, in Bridge bills, for collection; the owners of said bills to pay no commission for my trouble and attention to the business unless a full payment of the bills is made in current money, in which case the said Kelsey & Co. is to pay me five per cent. as my commissions for collecting the same. Should I fail to obtain payment, the owners of the bills are not to be charged for court fees over one or two and a quarter per cent. on the amount. It is understood that commissions are to be allowed on collection if seventy-five per cent. is recovered on the amount collected.

CHRISTIAN BREITHAUPT.

MACON, *November 1st*, 1829.

Messrs. CHARLES KELSEY and CHARLES McINTIRE, Charleston,

Gentlemen: You will please deliver to Mr. Thomas P. Bond or his order the amount of Bridge bills specified in your obligation to me at the dissolution of the firm of C. Kelsey & Co.

Respectfully, A. M. HOBBY.

Received, May 2, 1830, of Mr. Chs. McIntire, thirty-five dollars, in full for sheriff's, clerk's and attorney's costs, in the case of Sol. Kneeland vs. Henry Shultz et al., in which judgment was obtained in Edgefield district.

CHRISTIAN BREITHAUPT.

Mr. CHARLES McINTIRE,

Dear Sir: Your letter of the 14th ult. was received some days since; I have forwarded the assignment you requested to Colonel Breithaupt; I am surprised he should have taken judgment in my name. I enclose the receipt I received of him, which may be of use to you. My family wishes to be remembered to you.

Respectfully, your O. S.

SOLOMON KNEELAND.

Petersburg, 1st June, 1830.

EDGEFIELD—*In the Common Pleas.*

SOLOMON KNEELAND
vs.
JNO. McKINNE & HENRY SCHULTZ. } Judgment on Bridge Bills.

Received of Geo. Pope, clerk of the court of common pleas for Edgefield district, eleven hundred dollar bills, (8 dated 3d Dec. 1816, 3 dated 6th Dec, 1816,) and one fifty dollar bill, dated 6th Dec. 1816, upon which judgment has been written in the above stated case. These bills are delivered to me as one of the parties of C. Kelsey and C. McIntire, to whom the judgment in this case was assigned by Solomon Kneeland, the plaintiff, the 1st June, 1830. And I hereby authorize J. Terry, Esq., commissioner in equity for Edgefield, to retain in his hands that proportion of the funds arising from the sale of the property of H. Schultz, to which the above described bills would be entitled, until said bills are returned to the said George Pope.

Signed C. KELSEY, *for self and*
24th April, 1838, C. McINTIRE.

NEW YORK, *27th June*, 1838.

Please pay —— or order three hundred and seventy-six dollars and 62 cents, being the proportion of the above judgment to which he is entitled as the owner of eleven hundred and fifty dollars of the Bridge bank bills, on which the judgment was obtained.

C. KELSEY for himself and C. McINTIRE,
As assignees of S. Kneeland in the above named case.

Statement for Kelsey and McIntire, assignees of Solomon Kneeland.

Judgment and interest - - - - $3,925 62

The funds not being sufficient to pay the above and other rival claims, amounting to $17,706 56, the proportion of the above judgment, as reported January term, 1836, is - - $655 79

The following copy affidavit will show that C. Breithaupt claimed above one-fourth of the whole, and if this be correct, his estate is entitled to the same proportion of the sum reported.

So. Carolina, *Edgefield District.*

Personally appears Christian Breithaupt, attorney in fact for Chs. Kelsey and Charles McIntire, assignees of Solomon Kneeland, and makes oath that Henry Shultz is justly indebted unto said assignees of Solomon Kneeland in the sum of fifteen hundred and forty dollars, with interest from Sept. 17th, 1823, and does not believe that any part thereof has been paid, and that said Henry Shultz is indebted unto this deponent, in the sum of five hundred and sixty dollars, with interest from Sept. 17, 1823, no part whereof has been paid, and that the judgment obtained by Solomon Kneeland vs. Henry Shultz and John McKinne constitutes said demand.

CHRISTIAN BREITHAUPT.

Sworn to this 8th day of January, 1832, before me,
J. RICHARDSON, *C. C. P.*

The proportions of the respective parties are as follows, viz:

Kelsey and McIntire -	$469 66
C. Breithaupt - -	186 13
	$655 79

Mr. Griffin is authorized to pay to Kelsey and McIntire $469 66, and take their receipt in full of the judgment and interest.

J. TERRY, *C. E. E. D.*

Edgefield, 4th May, 1836.

Should Mr. Griffin not receive funds in Charleston, upon his bringing me the receipt of Kelsey and McIntire, I will forward them a check on the bank of Augusta for the money.

J. TERRY, *C. E. E. D.*

Solomon Kneeland *vs.* John McKinne and Henry Shultz. } Edgefield—Court of Common Pleas.

Assumpsit.

On twenty one Bridge bills of one hundred dollars each, judgment 20 March, 1824, for twenty-one hundred dollars, with there-

on from 17 September, 1823, and twenty-three dollars four cents costs.

I certify the above to be a true abstract of the judgment of record in this office.

GEO. POPE, *C. C. P.*

4 June, 1838.

There is an assignment in the record dated 1 June, 1830, by which Solomon Kneeland assigns this judgment and all the documents and papers attached to it, to Charles Kelsey and Charles McIntire.

GEO. POPE, *C. C. P.*

4 June, 1838.

There are now in the record 8 bills of 100 and 4 of fifty dollars each. A memorandum on the back of the declaration of C. Breithaupt, acknowledging to have received the bills.

No. 16. *Testimony of H. W. Hills, taken by Commission.*

THE UNITED STATES OF AMERICA,
South Carolina District.

A. M. HOBBY and others
vs.
CHAS. MCINTIRE and
CHARLES KELSEY. } In Equity.

Interrogatories in chief to be administered to Henry W. Hills, Esq. a witness resident in New York, to be produced sworn and examined on the part and behalf of the defendants.

1. Did you or not in 1822, and at what time in that year, or when know of a judgment in the State of Georgia, obtained by the Bank of the United States against Charles Kelsey and Charles McIntire or against Charles Kelsey and Company? Do you remember the amount of that judgment?

2. What proceedings were had and when on that judgment? Was or not an execution under it levied on the goods of Charles Kelsey and Company. And when was it levied? What injury or damage did Charles Kelsey and Company sustain by this levy?

3. Were or not Charles Kelsey and Charles McIntire compelled to give security to prevent the proceedings under this execution? Who was their security, and what was the amount for which they were compelled to give security?

4. What damages would, in your judgment, a mercantile house situated as Charles Kelsey and Company then were, sustain by having their goods levied on under an execution. What compensation would indemnify or hold harmless Charles Kelsey and Com-

pany from the injury which they sustained from the execution and proceedings under the said judgment?

5. Do you know any other matter, cause or thing that may benefit the defendants? If yea, state the same fully.

KING & WALKER,
Deft's Sol'rs.

THE UNITED STATES,
South Carolina.

In Equity.

A. M. HOBBY and others
vs.
CHARLES MCINTIRE and
CHARLES KELSEY.

Cross Interrogatories to be administered to Henry W. Hills, Esq. a witness resident in New York, to be produced sworn and examined on the part and behalf of the defendants.

1. Did you know the firm of Kelsey & Co. prior to 1822, who were the members of that firm?

2. Had Charles Kelsey or Charles McIntire any private or separate property besides what was invested in the firm of Kelsey & Co? Do you know what the several partners in that firm contributed?

3. When Kelsey & McIntire formed a new partnership, had either of them any accession of fortune that you know over and above what had been invested in the business of Kelsey & Co., and the profits they had made?

4. Do you know why the execution mentioned in the first interrogatory was levied on the goods of Kelsey & McIntire? Was it not because they were the defendants in the suit?

5. Do you know why Kelsey & McIntire were relieved from the payment of that judgment? Were they relieved by a judgment of the court, or by the principal debtor settling the debt with the creditor.

6. Can you undertake to say that Kelsey & McIntire paid any money or lost any money or property on account of the judgment alluded to in the first interrogatory? If you answer in the affirmative say how much was paid or destroyed, and how you estimate the value?

7. Do you think that any man has a right to give any opinion on the subject of the 4th interrogatory? Is it not impertinent for one man to judge for another in a matter of feeling and credit?

8. Was the house of Kelsey & McIntire in great credit at the time alluded to in the first interrogatory? Was it not known, or ought it not to have been known that there was judgment against

them? Did not Kelsey & Co. lean on Potts & McKinne, and on John & Barna McKinne, during the time of their prosperity ?

9. Is it not true that Kelsey & McIntire or one of them had failed in business, before Hobby had entered into business with them? Do you not know that Hobby was a near relation of McKinne, and that Hobby's connexion was very desirable to Kelsey and to McIntire, when he went into business with them?

PETIGRU & LESESUE,
Plaintiff's Solicitors.

UNITED STATES OF AMERICA, *South Carolina District.*

A. M. HOBBY and others
vs.
CHARLES MCINTIRE & CHARLES KELSEY.

Depositions of Henry W. Hills, of the city of New York, merchant, aged fifty-one years, a witness produced, sworn and examined on the interrogatories and cross interrogatories appended to the commission hereunto annexed, in a certain cause now depending in the Federal Circuit Court of the United States of America, for the District of South Carolina, wherein A. M. Hobby and others are plaintiffs, and Charles McIntire and Charles Kelsey are defendants; the said examination and deposition being taken at the office of J. W. Mitchell, one of the commissioners named in said commission, No. 63 1-2 Cedar street, in the city of New York, on this eighth day of October, one thousand eight hundred and thirty-eight, before John N. Taylor and John W. Mitchell, Esquries, two of the commissioners, [Henry L. Pierson, the other commissioner, being absent from the said city:] the said commissioners, before acting in the premises, having severally taken the oath prescribed in said commission.

The said witness, having been first sworn pursuant to the directions of the said commission, says as follows, to wit:

First. To the first direct interrogatory he says, I did know of the judgment inquired of in this interrogatory in the spring of 1822. That it was of the amount of about thirty thousand dollars, and that I was applied to by the defendants in said judgment Kelsey & Company to sign a bond to enable them to get an injunction to stay proceedings on an execution on said judgment against their stock of goods.

Second. To the second interrogatory he says, that early in the spring of 1822, a levy was made on the goods of Charles Kelsey & Company, under an execution issued on said judgment. I know of no other proceedings on said judgment than the levy on said goods, and their subsequent release on my execution of the bond before spoken of. What injury or damage the said Charles Kelsey & Co. sustained by the levy I am not able to say, but I should

think it would be great as such a proceeding is calculated to destroy the credit of any house.

Third. To the third interrogatory in chief he says they were compelled to give the security to prevent a sale under the execution. Johnson & Hills of which firm I was one, were the securities. The amount of the bond I do not now recollect, nor have I the means of knowing, at present.

Fourth. To the fourth interrogatory in chief, he says as I have before observed, the damages would be very great—and the damages which such a house as Charles Kelsey & Co. would sustain by reason of their goods being levied on under an execution, would be from ten to twenty thousand dollars. So far as the proceedings went in their case, in my judgment, it would have taken at least ten thousand dollars to indemnify Charles Kelsey & Co. for the injury done them.

Fifth. To the fifth interrogatory in chief, he says I know nothing further.

HENRY W. HILLS.

Examination taken, reduced to writing, and by the witness subscribed this 8th day of October, 1838, before us

JOHN N. TAYLOR, } *Commissioners.*
JOHN W. MITCHELL. }

First. To the first cross interrogatory, the said witness saith, I did know the firm of C. Kelsey and Company prior to 1822. I believe the members of that firm were Charles Kelsey, Charles McIntire and A. M. Hobby.

Second. To the second cross interrogatory he saith, I know nothing of the private or separate property of either Kelsey or McIntire, or what either of the partners of the firm of Kelsey & Co. contributed.

Third. To the third cross interrogatory, he saith, I know nothing of the matters inquired of in this cross interrogatory.

Fourth. To the fourth cross interrogatory, he saith, I know nothing of the matters inquired of in this cross interrogatory.

Fifth. To the fifth cross interrogatory, he saith, I know nothing of the matters inquired of in this cross interrogatory.

Sixth. To the sixth cross interrogatory, he saith, I can undertake to say that Kelsey & McIntire paid money and lost money on account of the judgment alluded to in the first interrogatory.

They paid our house—that is the house of Johnson & Hills for endorsing their paper under a guarantee from Mr. S. Kneeland of Augusta a brother-in-law of Mr. C. Kelsey for which we (Johnson & Hills) received a commission. This was in consequence of the destruction of their credit by the judgment and levy. I am unable to state what amount of commission was paid us (Johnson & Hills), not having the books here to refer to. I know of no other money actually paid nor do I know of any property destroyed. I have

already stated in my answer to the fourth direct interrogatory the amount of injury to Kelsey & Co's property by the proceedings on the judgment. The manner in which I estimate the value of the damage, is the injury or destruction of their credit so that they were unable to replenish their stock of goods either in the New York or other markets for several months, or to extend their credits or sales of goods at home — thus limiting materially their business and profits for a year or more. From my knowledge of the amount of business doing by Kelsey & Co. at that time, I am enabled to make the estimate of the damage they must have sustained.

Seventh. To the seventh cross interrogatory he says, I think a man has a right to give an opinion on the subject of the fourth interrogatory. It is not wrong nor impertinent for a man to judge for another in a matter of feeling and credit, particularly, situated as the house af Kelsey & Co. were, at the time the fourth interrogatory alludes to.

Eighth. To the eighth cross interrogatory, he says, they had credit enough at that time, as I was informed and believe to procure the stock of goods levied on upon their own responsibility, and to conduct their business on favorable terms until the levy was made, no doubt it was known that there was a judgment against them. I do not know on whom Kelsey & Co. leaned or whether or not they leaned on any one during the time of their prosperity.

Ninth. To the ninth cross interrogatory he says, I do not know, that Kelsey & McIntire or either of them had failed iu business before they entered into business with Hobby. To the remainder of this cross interrogatory I know nothing.

HENRY W. HILLS.

Examination taken reduced to writing and by the witness subscribed this 8th day of October 1838 before us

JOHN N. TAYLOR,
JOHN W. MITCHELL,
Commissioners.

We certify the foregoing examination comprized in four sheets, were taken before us at the time and in the manner therein set forth.

Witness our hands and seals at the city of New York this 8th day of October A. D. 1838.

JOHN N. TAYLOR, [L. S.]
JOHN W. MITCHELL, [L. S.]
Commissioners.

No. 17.

Testimony of J. McKinne taken by Commission.

UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

In Chancery.

A. M. HOBBY et al.
vs.
CHARLES KELSEY & CHARLES MCINTIRE.

Interrogatories for John McKinne, Esq., a witness residing in Augusta Georgia to be examined on the part of the complainants.

1. Do you know the parties to this suit ?

2. Had you business transactions with the firm of C. Kelsey & Company of Savannah, prior to February 1822 ? Do you know who the partners were ?

3. Is there any relationship between you and the complainant A. M. Hobby. Did you know his circumstances when he went into partnership with the defendants ? What did he carry into the house in money ? Had he any valuable friends whose correspondence or business was at that time of importance in point of credit ?

4. Do you know what business the defendants were doing before the partnership ? Do you know what they severally contributed ?

5. Were you acquainted with the dissolution of the partnership between complainant Hobby, and the defendants ? Did you know that the complainant Hobby had agreed to indemnify the defendants against a judgment of the United States bank ?

6. What was the origin of the debt on which that judgment was founded ? Did the bank of the United States receive payment and from whom ? And who was the party to be benefited by pressing that judgment against Kelsey & Co. ?

7. Were Kelsey & McIntire released by Mrs. Gardner from their liability on that judgment. How was their exoneration effected, and who was accepted by Mrs. Gardner as her paymaster, to the exoneration of Kelsey & Co. ?

8. Did the situation of Hobby under his convenant, to indemnify Kelsey & McIntire affect you, or cause you to make more or greater exertions, for the relief of Kelsey & Co., or did you allow any weight in the arrangement of your affairs to the consideration that Hobby had a deep interest in the relief of Kelsey & Co. from their liability to Mrs. Gardner.

9. Who constituted the firm of McKinne & Co. ? Have you examined their books, and can you say from those books, or from your recollection any thing of a debt of sixteen hundred and ninety-

nine dollars, supposed to be due on 9th February 1822 to McKinne & Co. by C. Kelsey & Co.?

Did Kelsey & Co. in fact owe to McKinne & Co. any debt—or did McKinne & Co. receive any payment from Kelsey & Co. after 9th February 1822 or about that time ?

10. Do you know who Barna McKinne was ? When did he die ? Are you acquainted with his business ? Have you access to his books ? Do you know any thing of a debt supposed to be owing by C. Kelsey & Co. to Barna McKinne of $5,397 . 75–100 on the 9th February 1822, or about that time ? Have you examined his books ? Can you say whether Kelsey & Co. paid any such sum to Barna McKinne or his assignees, in February 1822 or afterwards.

11. Do you know any thing of a levy made on Kelsey & Co., under the judgment of the United States bank in 1822 or 1823, or sometime before that case was settled ? Did the defendants suffer in their credit by that levy, or did they enjoy their full credit, and do a prosperous business from that time forwards ?

12. Do you know any thing of the rate of exchange in 1822, between Savannah and New York ? Is it possible or likely that a merchant of ordinary skill, would lose in that year 5 per cent. by the exchange on New York, without any indemnity by raising prices, or getting the premium of exchange on the bills drawn against his exports ?

13. Is there any other matter or thing which you know of, that may tend to shew that Kelsey and McIntire should keep their agreement with the complainant Hobby, and pay him his estimated share of $5,500 00, with interest, or any thing that may be otherwise beneficial to complainant ? If yea, declare the same as fully as if specially thereunto interrogated ?

PETIGRU & LESESUE,
Complainants' Solicitors.

JAMES McLAWS,
Complainants' Commr.

Messrs. KING & WALKER :

You will please take notice that after the lapse of the usual time a commission will be issued to examine John McKinne on the preceding interrogatories.

Your obed't servts,
PETIGRU & LESESUE.

12th June, 1838.

UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

A. M. HOBBY et al.
vs.
CHARLES KELSEY and CHARLES MCINTIRE.

Cross interrogatories for John McKinne, Esq., a witness residing in Augusta, Georgia, to be examined on the part of the complainants.

1. What was the character of your business transactions with the firm of Charles Kelsey and Company? Were they or not chiefly, if not entirely on your own account. State in what they consisted.

2. When did you first know the firm of C. Kelsey & Co. Who then formed the firm? How long had they then formed the firm and for how long did they form it? When did any change take place, and what was the change?

3. Do you or not know any thing of your own knowledge of the terms of the partnership that traded under the firm of C. Kelsey & Co?

When did Mr. Hobby enter into business with C. Kelsey? What was Mr. Hobby's then situation? Had he then any capital to put into the business? Had he experience as a merchant, or knowledge of dry goods?

What was then the situation of Mr. Kelsey? Had he not been sometime in business? Was he not in good credit and supported by strong friends?

4. Can you or not say if any capital was advanced to the concern by Mr. Hobby or his friends? If you answer affirmatively, then say how much was advanced and by whom. Of what did it consist, and was it not repaid or returned?

5. When was Charles McIntire taken as a partner into the firm of Charles Kelsey & Co.? Was or the name of the firm changed? Do you or not know the terms of their partnership? What was then the situation of their business; and what was the result of that business?

6. What caused the dissolution of the partnership of Charles Kelsey & Co.? Was or was not their failure caused by their implication with the friends or connections of Mr. Hobby?

Did or not the friends and connections of Mr. Kelsey continue in good credit after the failure of C. Kelsey & Co; and did they or not continue their aid to him?

7. On what was the judgment founded against which Mr. Hobby undertook to guarantee C. Kelsey & Co.? Were you or not the principal debtor in the debts on which that judgment was rendered? Was it or not chiefly or to what extent for drafts drawn for your accommodation?

8. How did Mr. or Mrs. Gardner become the owner of that judgment? Did you or not at sometime and when settle for that judgment with Mr. or Mrs. Gardner? Did you or not give country paper enough to pay it, or as collateral security for it? Did you or not through the aid of Mr. Hobby, or in some other and what manner, obtain from Mr. Gardner or from Mrs. Gardner after his death, a part of the same paper; and did you or not after collecting it, refuse to pay it over to Mr. Gardner, or to Mrs. Gardner? Had you or not on receiving it back from him or her, given your pledge that the amount of it when collected should be applied to the payment of this judgment? Was it or not your refusal or neglect to pay, the cause why Mrs. Gardner after the death of Mr. Gardner claimed against C. Kelsey & Co., the balance due on the said judgment against C. Kelsey & Co.? Is or not Mrs. Gardner your sister?

9. Was or not this judgment against C. Kelsey & Co. held by Mrs. Gardner, pressed against them at your instance or by your procurement, or in consequence of your default? Were they or not, compelled to apply for an injunction against it? How long did that injunction suit continue; and were or not C. Kelsey & Co. put to great expense and trouble by it? Did you or not represent to Mrs. Gardner that Charles Kelsey & Co., these defendants, owed to you or to your brother Mr. B. McKinne, and that they ought to pay the balance of the judgment? Did or not Charles Kelsey wait on her, and satisfy her that his firm was not indebted to you, and did she or not then refuse to be an instrument to prosecute them through the means of that judgment.

10. Did you or not settlement of the claim of McKinne & Co. against C. Kelsey & Co. in 1825, or when, with McIntire receive a certain sum in Bridge Bank bills or an order for them, and for how much as a balance in full after allowing thirteen hundred and odd dollars, the amount of a judgment or claim against them on a debt of yours to a Mr. Womack or Taylor, on which the said C. Kelsey were endorsers or acceptors, and which the defendants had paid. And did not these sums with interest amount to the debt due McKinne & Co. with interest agreeably to the account rendered to you and according to your receipt?

11. Did you not know or understand that the defendants had a settlement with Mr. B. McKinne in 1825 or at what time, and that they had been sued, and judgment obtained against them as endorsers for him, and on claims where he was endorser before them, and which sums the defendants have paid to a large amount, and which he admitted as a fair charge and good payment for any balance he claimed against C. Kelsey & Co., and that on that settlement there appeared to be a balance due to the defendants, after deducting the old account of C. Kelsey & Co.

12. When did Mr. B. McKinne leave Savannah and go to live in Augusta? Did he keep any mercantile books after he left Savannah? If you say he kept books for his business, then say if they were regular mercantile books? Were they or not very con-

fused and inaccurate? Did they contain accounts of his drafts, acceptances, notes, endorsements, or of the engagements of any person or persons for him?

13. Do you or not know that the defendants Kelsey and McIntire after the dissolution of the firm of C. Kelsey & Co. had a settlement with Mr. B. McKinne? Had they or not overpaid him? Had they not paid so much for him as the securities either as his endorsers or otherwise, that he had become indebted to them? Did they or not claim a considerable balance from him?

14. Did or not Mr. B. McKinne take the benefit of the insolvent law, and when did he take it? Was he or not a partner with you in the Bridge Bank, and when was he so a partner? And how long did the partnership continue? Were there or not many large transactions in Bridge bills for Mr. B. McKinne and for you with and through C. Kelsey & Co.? Were or not these transactions frequently without regular entries in any books kept by him, if he kept any? Was or not an account rendered to him or to you for him, or to you on your account in 1825, or about that time, either by Kelsey and McIntire, or in the name of C. Kelsey & Co., shewing a large balance due to them at that time, if so, what has become of that account or these accounts? If it or they be within your power, attach copies to your answer to these interrogatories. Would or not on this account or on these accounts, a considerable balance remain due to Kelsey and McIntire, after paying all that in 1822 appeared due to McKinne by them, or by C. Kelsey & Co.?

15. Were you or not doing business in Augusta, during the partnership of C. Kelsey & Co.? What means have you of knowing the prices of exchange in Savannah when that partnership was dissolved? If you have such means pray state what they are particularly?

16. Do you know any other matter, cause or thing that might benefit the plaintiff, if so, state it as particularly and fully, as if thereunto specially interrogated?

KING & WALKER,
Def'ts Sol'rs.

Commissioner for defendants,
H. H. Cummings Esq.
Augusta, Ga.

United States of America,
State of Georgia, Richmond County.

The United States of America,
Sixth Circuit, South Carolina District.

A. M. Hobby et al.
vs.
Charles Kelsey and
Charles McIntire.
} In Chancery.

By virtue of a commission to us directed, issuing from the sixth circuit court of the United States, South Carolina district, we hav-

ing first taken the oath in said commission prescribed for the commissioners, one of our number acting as clerk, have this day caused John McKinne of said county and State, aged about sixty-one years, to come before us, who being duly sworn true answers to make to the direct and cross interrogatories to the said commission annexed, deposes and answers as follows.

To the first direct interrogatory, he answers, I do know the parties; to the best of my recollection I knew the parties from about the year 1817 to that of 1825, but since then have known but little of the defendants.

To the second, he answers, the Bridge Bank Institution (of which I was a partner) had various transactions with the firm of C. Kelsey & Co., which firm for a considerable time consisted of Chas. Kelsey and Alfred M. Hobby, and for a considerable subsequent time of these gentlemen and Charles McIntire.

To the third, he answers, Mr. Hobby is my nephew. I well know the circumstances of Mr. Hobby when he went into partnership with Mr. Kelsey, into which partnership he Hobby carried ten thousand dollars, one half of which sum was furnished by my late brother Barna McKinne and the balance by myself. At the time Mr. Hobby began business with Mr. Kelsey, he (Hobby) had in New York, Charleston, Savannah and Augusta mercantile connections of extensive business and high credit, and I well know that they all felt much for his interest, and would have allowed him or his firm (owing to their regard for him) to use their credit to any reasonable amount.

To the fourth, he answers, before the formation of the partnership of C. Kelsey & Co. Mr. Kelsey was (I think) a dry-goods merchant in Savannah; Mr. McIntire (I believe) his clerk, and Mr. Hobby having then recently finished his education, was not in business of any kind. I do not know what any of the partners except Mr. Hobby contributed.

To the fifth he answers, I knew of the dissolution, have heard from all the parties and believe that Mr. Hobby had agreed to indemnify his late partners against injury from the judgment referred to.

To the sixth he answers, according to my present recollection, the judgment was obtained on a draft from a particular friend of Mr. Kelsey, a connection of mine John Tanner, on McKinnie, in part payment for a draft previously drawn by McDonald and Pope on Tanner, B. McKinnie & Co. C. Kelsey & Co. and Thomas Gardner, (if I mistake not) were endorsers on Tanner's draft. The Bank of the United States received payment from Mr. Gardner, and Mrs. Gardner administratrix on the estate of her late husband was to be benefited by its payment by C. Kelsey & Co., or any other person.

To the seventh, he answers, the defendants were exonerated from the payment of said judgment by my placing in Mrs. Gardner's hands, collateral security for the debt, and promising if that

was not enough to pay the balance, I of course became paymaster instead of the defendants.

To the eighth he answers, my great solicitude, that Mr. Hobby's engagements to his late partners relative to this judgment, should be faithfully fulfilled, was a great inducement for me to bring about Kelsey and McIntires exoneration, as without such exoneration I believed Hobby would lose his claim on them.

To the ninth he answers, John McKinnie and James Lamkin, formed the firm of McKinnie & Co., I have examined their books, and cannot find even the name of C. Kelsey & Co. on them. I am therefore constrained to say that with C. Kelsey & Co. McKinnie & Co. had no transactions whatever, and the settlement in 1825 (if any was had) must have been with the Bridge Bank concern; should such a settlement have been had, the receipts given the defendants will show what it was.

To the tenth he answers, Barna McKinnie was my brother, he died the first day of March 1833. I had a general acquaintance with his busines, but what has become of his books I know not, I have not the least recollection of any debt due by defendants to Barna McKinnie, nor can I suppose any such debt existed, as in January 1822, (preparatory to taking the insolvent debtor's act) he filed in the clerk's office of Richmond county, a schedule of all his effects, among which not the least mention is made of any claim against C. Kelsey & Co., and subsequent to January 1822, I feel confident there were no business transactions of any such amount between C. Kelsey & Co. and Barna McKinnie; of course no payment was made that I know of by the defendants to either Barna McKinnie or his assignees.

To the eleventh he answers, I have heard of such a levy, and I believe it was made. I am not aware of any other injury caused by it to Kelsey & McIntire than the payment of fees to their attorneys. I have no recollection of its causing a suspension of their business.

To the twelfth, he answers, I do not know what was the rate of exchange in 1822, but as the bills of the Bank of the United States, were worth at least par all over the country, and as that institution had a branch, where its bills could be had at par, I could not suppose a remittance from Savannah to New York would have cost more than one per cent.

To the thirteenth he answers, from my frequent conversations with the parties to this suit, I never was induced to believe nor do I believe that their losses above their profits amounted to any such a sum as would have caused Hobby to loose any thing like the capital he carried into the concern, or even the half of it. I have no recollection of ever having heard Mr. Kelsey or Mr. McIntire say so, nor do I believe such to be the fact. I know of nothing more beneficial to the plaintiff. JOHN McKINNIE.

Sworn to and subscribed before us this second day of August, 1838.

JAMES McLAWS, *Commissioner.* [SEAL.]
HENRY M. CUMMING, *Commissioner.* [SEAL.]
G. A. M. WALKER, *Commissioner.* [SEAL.]

To the first cross interrogatory, he answers, the Bridge Bank Company was (I think) in the habit of loaning to C. Kelsey & Co., considerable sums of their bills without interest, and receiving those bills or others back in payment, the use of those sums of money was thought serviceable to C. Kelsey & Co., or they would not have received them.

To the second he answers, I first knew the firm of C. Kelsey & Co. in 1817 or 1818. It consisted when first created of Charles Kelsey and Alfred M. Hobby, I know not for how long it was formed, nor at what time Mr. McIntire was taken into it.

To the third he answers, I do not know the terms of C. Kelsey & Co., or the date of its formation. Mr. Hobby was young, clear of embarrassments, and carried into the firm ten thousand dollars in cash, had no experience (as was known to Mr. Kelsey) in the dry goods business. Mr. Kelsey, at the formation of the partnership was (I believe) doing a dry goods business in Savannah, but with the extent of his credit, or by what friends supported I knew not.

To the fourth he answers, the capital carried into the firm of C. Kelsey & Co., by Mr. Hobby was ten thousand dollars, one-half of which was furnished by my late brother Barna McKinnie, and the balance by myself, no part of which, to the best of my knowledge and belief ever has been returned.

To the fifth he answers, I know not at what time Mr. McIntire was taken into the firm of C. Kelsey & Co. the name of which firm (I believe) was not changed on his coming into it, nor do I know the terms of the partnership, the then situation of it or its results except the so far loss to Hobby of his ten thousand dollars, and this troublesome controversy.

To the sixth he answers, I never was particularly informed by any of the firm, the cause of its dissolution, and I do not believe that any friend of Mr. Hobby's owes to the late firm or any of its members even a single cent. Not knowing the friends and connections of Mr. Kelsey except our family in Augusta who were worthy, but then I think not able to aid him much, I cannot say any thing about their credit or what if any aid they extended to him.

To the seventh he answers, to the best of my knowledge and recollection the judgment was obtained on a draft from Mr. John Tanner (a particular and intimate friend of Mr. Kelsey's and a connection of mine) on McKinnie & Co., to pay in part, one that had previously been drawn on Tanner by McDonald & Pope. Being the acceptor I was of course the payer, but for it I never received a cent, and as it was drawn endorsed and discounted in Savannah (the place of the defendants residence) I fully believe they well knew it was not for my benefit or accommodation.

To the eighth he answers, Mr. Gardner having paid the judgment, became the owner, or obtained the control of it, and Mrs. Gardner as administratrix of her deceased husband was entitled to

it. I did give Mrs. Gardner country paper as collateral security for the debt, and so far from withdrawing it, she collected the amount, and gave credit on the judgment for the same, Mrs. Gardner is my sister.

To the ninth, he answers, until I knew the conditions on which the dissolution of Mr. Hobby's connection with his late partners had taken place, I did advise the pressing of the execution against the defendants, but as soon as I became acquainted with his engagements to the defendants, I ceased so to advise under a firm conviction that so long as their liability continued, he never would be paid. I believe Kelsey and McIntire did apply for and obtain an injunction, but how long that injunction suit continued, or what it cost, I know not, though I should suppose the duration not long or the cost much.

I have no recollection of saying to Mrs. Gardner that the defendants were indebted to either my late brother or myself. Mr. Kelsey I believe did wait on Mrs. Gardner and assured her that the existence of this judgment was the only obstacle to his immediately embarking in a new, extensive and probably profitable business. These representations and my promising to pay the balance then due on the judgment, were the cause of the defendant's exoneration. But I am authorized to say that Mr. Kelsey could not have made any impression on Mrs. Gardner's mind that could have induced her to believe that I wished him or any other person to be persecuted.

To the tenth, he answers, I have no recollection or belief that McKinne & Co. ever had any transactions with C. Kelsey & Co., though such a settlement as is here alluded to, may have taken place with me individually on Bridge bill or some other account, but be it what it may, the receipt I gave, will fully explain.

To the eleventh, he answers, I recollect that the defendants were each in Augusta subsequent to January, 1822, and had interviews with my late brother, but I know not that during these interviews any settlement whatever took place, nor do I recollect to have heard that the defendants were ever sued (except in the case of the United States Bank above referred to,) where Mr. B. McKinne was first endorser, though such may have been the case without my knowledge.

To the twelfth, he answers, I think Mr. B. McKinne left Savannah to reside in Augusta in 1817 or 1818. I have no recollection of examining what kind of books he kept after he came to Augusta.

To the thirteenth, he answers, if such was the case, it was unknown to me. I do not believe my brother owed defendants a cent, for had such been the case, one of them at least would not to this day have been silent on the subject. I do not know, nor do I believe that they claimed any balance against Mr. B. McKinne.

To the fourteenth, he answers, Mr. Barna McKinne did take the

benefit of the insolvent debtor's act in 1822. He was a partner with me in the Bridge Bank Company, and according to my present recollection, from the year 1817 to the year 1819; the precise duration of that partnership I do not recollect. There were many transactions of this kind, accounts of which were kept by the Cashier of the Bridge Bank, but a copy of these accounts or any of them, I have not, nor do I know where they are, as the Bridge Bank books, &c. have long since been out of my possession.

I am at the first of the defendants having claimed any balance from my late brother or myself, nor do I believe either of us owed such balance, for had it been so, the defendants, I think, would have taken other means than this interrogatory, to keep me in mind of it.

To the fifteenth, he answers, part of the time of the duration of the partnership of C. Kelsey & Co. I was in business in Augusta. The rest of this question replied to, in answer to the 12th direct interrogatory.

To the sixteenth, he answers, to the best of my knowledge, recollection and belief, I have already fully answered all the interrogatories both direct and cross. I know of nothing more that will be of benefit to either party.

JOHN McKINNE.

Sworn to and subscribed before us, this second day of August, 1838.

JAMES McLAWS, *Commissioner.* [L. S.]
HENRY H. CUMMINGS, *Commissioner.* [L. S.]
GEO. M. WALKER, *Commissioner.* [L. S.]

No. 18.

Account and receipt of J. McKinne.

Mr. John McKinne,

To C. Kelsey & Co. Dr.

1820.				
25 Feb'y.	To accep'y. his dft. in fav. B. McKinne given Mr. Wammach at 90 days, -		1,728	
14 Apl.	Cash pd. Lawrence Thompson for sundries, - - - - -		29	06
18 "	" J. Munn for ½ bbl. tongues, -		14	
8 May,	" for ½ doz. col. hose for Miss Pope,		10	
30 "	" A. M. Hobby expenses to Darien,		21	75
5 June,	Miss Pope, - - -		16	
7 July,	- - - - - - -		15	
1825.				
Interest on $1,302 39, paid judgment on your dft. to J. Womack from 15 Nov. to Aug. 1st 1825, - - - -			177	98

19 July,	Cash pd. Davis & Berrien, fee for defending suit brought on dft. of J. Womack,		91 20
			2,102 99
	CREDIT.		
By	difference between your dft. to J. Womack and judgment paid by us, - -		425 61
			$1,677 38
McKinne & Co. acc. rendered 22 Feb. 1820, -			1,699 02
Interest on this was claimed by John McKinne and after considerable altercation was allowed,			860 82
			2,559 84
This acc. was paid by J. McK.'s allowing the following items:			
Amt. judmt. paid 15 Nov. 1823,		1,302 39	
Interest on the same,		177 98	
John McKinne's acc.		105 81	
Interest on the same,		44 41	
Fee allowed Davis & Berrien for defending suit on the dft.		91 20	
		1,721 79	
For Bridge Bills,	560 80		
Interest on the same,	277 25		
		838 05	
			$2,559 84

3d August, 1825.

Received, Augusta, August 3d, 1825, from C. Kelsey & Co. their order on Christian Breithaupt, Esq. for five hundred and sixty dollars in Bridge bills, which amount is in full of all demands against them on my individual account and on account of the late firm of McKinne & Co.

JOHN McKINNE.

No. 19.

Report of the Register.

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } Report.

In this case the clerk respectfully reports that under the order of court directing that the defendants should account to the complain-

ants for the sum of $1,150, Bridge bills, according to the agreement between the parties dated 9th February 1822, which among other things required "that the defendant should pay to the said A. M. Hobby, after the debts of the said firm are all paid and discharged, and a sufficient sum collected out of the debts now due to the said firm $5,500, and in Bridge bills $1,150, whenever he shall demand them." The defendant Charles Kelsey at one of the meetings held before the clerk, to wit the 12th May, 1838, did tender to the complainants in compliance (as asserted by him the said C. K.) with the terms of the agreement $1,150 in Bridge bills. The solicitor for the complainants refused to accept the tender, and the bills were then delivered to, and are now in the possession of the clerk. It appeared in testimony that a judgment was entered up in the name of Sol. Kneeland vs. McKinne & Shultz on certain Bridge bills, and assigned by the said S. Kneeland to Kelsey & McIntire, the sum of $469 66 of money recovered under the said judgment, by an apportionment made in January 1836, is in the hands of the commissioner in equity for Edgefield district, subject to the order of Kelsey & McIntire, which has never been drawn.

The clerk then proceeded to comply with that part of the order directing that an account should be taken of the assets of the firm of Kelsey & Co. which came to the hands of the defendants on the dissolution, and of the debts paid by the defendants. G. H. Kelsey a witness produced on the part of the defendants swore to the best of his knowledge, that all the books of the concern of Kelsey & Co. were destroyed in the great conflagration which happened in this city on the night of the 27th April 1838, they were to his knowledge in two trunks in the third story of the building No. 271 King street which was consumed, he has since searched for them, bnt has succeeded in finding only the letter book, which was produced and delivered to the clerk. Under these circumstances, the only information must be derived from the accounts (which purported to be copies from these books) filed as exhibits to the answers of the defendants during the progress of the cause; from these it appears that the sum of $31,227 41 had been received and $28,974 11 paid away. Among the debts included in the exhibits filed by the defendants 7 April 1830, with their answers under oath, was one due to J. McKinne & Co., also one due to B. McKinne, both of which are there mentioned as having been paid. J. McKinne in his examination under commission states that he has examined the books of McKinne & Co. and cannot find the name of Kelsey & Co. in them, and is therefore constrained to say that McKinne & Co. could have had no transactions with Kelsey & Co., and the settlement mentioned (if any) must have been with the Bridge Bank concern. With respect to the debt stated as paid to B. McKinne, he says that B. McKinne (his brother) died in March 1833, he had a general knowledge of his business, does not know what has become of his books, has no recollection of any debt due by defend-

ants to B. McKinne, and cannot suppose any such existed, as in January 1822 (preparatory to taking the benefit of the insolvent debtors' act) B. McKinne filed in the clerk's office of Richmond county, a schedule of his effects among which no mention is made of any claim against the said Kelsey & Co. Subsequently to January, 1822, he is confident there were no business transactions, of any such amount, between B. McKinne and Kelsey & Co.

The letter book contains evidence of subsisting demands between them; and, inasmuch as these items are supported by the oaths of the defendants, and the complainants having had the opportunity, at any time between the date of their filing, 1830, and the destruction of the books in 1838, of disproving them, if incorrect, by a reference to the books of Kelsey & Co., it was considered as just that the allegations of the defendants should be sustained.

The defendants claimed several credits for exchange loss sustained in recovering debts in uncurrent money, counting room rent, travelling expenses, clerk hire, postages, commissions, and incidental expenses. To all these items, complainant's solicitor objected; and it would seem that, under all the circumstances of the case, they could not be admitted. The absence of that precise evidence necessary to their support, offered a sufficient reason to sustain the objections: no testimony was produced to prove that any exact account, in detail, had been kept of these charges; and, if allowed, it would seem equally just that the defendants should account for the profits which reasonably might be expected to have been received (among other sources) from the sale of the goods on hand at the dissolution. The defendants claimed a commission of 5 per cent. to obtain security on an injunction bond in the case of the United States Bank, the rate, as established by the rules of the chamber of commerce, per indorsing, is 2½ per cent. The testimony produced, established that security was given in the sum of $5,590. H. W. Hills, who was examined, states that a commission was paid to Johnson & Hills per endorsing the paper of Kelsey & Co. under a guarantee from S. Kneeland, their credit having been in a great measure destroyed, in consequence of the judgment and levy before referred to; no amount, however, was stated, no charge was therefore allowed. It was proved that a fee of three hundred dollars was paid to Mr. Berrian to obtain the injunction, and give proper attention to the case.

The defendants, in their answer, filed 10th January, 1830, also claimed $159 25, paid as balance due T. Phelps & Co.; also $75, expenses of suit in the case of F. H. Nicols, and evidence was given to prove that $35 costs were paid in the case of Kneeland vs. McKinne & Shultz. These charges were allowed.

The defendants claim $4,000 per the loss sustained in consequence of the levy above alluded to. A witness, examined in New York, says that it would have taken at least $10,000 to indemnify the defendants per the injury done them. In consequence of the destruction of their credit, they were unable to replenish their stock

of goods, either in New York or other markets, for several months, or to extend their credit or sales of goods at home, thus limiting materially their business and profits for a year or more. It is difficult to fix the precise amount of loss: there can scarcely be a doubt that some must have been sustained in consequence of the proceedings against the defendants; and, as by the articles of agreement, they were to be protected from the judgment, it would seem proper that some allowance should be made.

Respectfully submitted.

JAMES JERVEY,
District Clerk U. S. S. C. D.

Amount received by K. & Co. - -		$31,227 41
Debts paid by K. & Co. - -	$28,974 66	
Balance due T. Phelps & Co. -	159 25	
Expenses, debt to T. H. Nichols -	75 00	
Costs paid C. Breithaupt - -	35 00	
Mr. Berrien counsel fee - -	300 00	
		29,543 91
Balance - - - - - -		$1,683 50

(Should no allowance be made for injury sustained in consequence of levy under United States Bank, execution and levy.)

No. 20.

Complainants Exceptions to Report.

UNITED STATES OF AMERICA, *Sixth Circuit S. Carolina District.*

A. M. HOBBY AND BOND,
vs.
KELSEY AND MCINTIRE. } In Equity.

Exceptions by Complainants to the Report of the Clerk.

1. That the complainants are entitled to a decree against the defendants, for a proportionable part of the sum in the hands of Mr. Terry, commissioner in equity for Edgefield district, applicable to the payment of the judgment of Solomon Kneeland versus Schulz & McKinne, on $2,100 00 in Bridge bills with interest thereon from the time the defendants might have received the same, viz: January, 1836, the sum in the hands of the commissioner being $655 00; and the amount of Bridge bills, to which the complainants were entitled under the agreement $1,130 00, their proportionable part is $421 00 with interest aforesaid.

2. That in the amount of debts reported to have been due by Kelsey & Co., and paid by the defendants, there are included the sum of $5,397 75, as a debt paid to Barna McKinne and the sum of $1,699 00 as a debt paid to McKinne & Company, whereas the evi-

dence produced shows, that no such debts ever existed, and no such sums of money were ever paid by the defendants, or at least makes it necessary that defendants should furnish proof of their payment.

3. That there is also included in the said amount the sum of $2,917 05, which the defendants allege they paid over and above the debts contained in the statement, which was the basis of the settlement between the complainants and defendants at the dissolution of their copartnership; whereas it is submitted that the defendants have not only offered no proof whatever of the payment of that sum, but that even if they had proved it, they are not entitled to charge the complainant with the payment of any debts that are not contained in the said statement.

The complainants also except to the allowance of $159 25, charged as a balance of debt paid to T. Phelps & Co.; also $75 00 expenses of suit in the case of Nichols, and $35 00 costs, in the case of Kneeland, vs. McKinne & Schulz, for the reasons above stated.

4. That the defendants are not entitled under the complainants indemnity as to the judgment of the United States Bank, to more than the actual damage they sustained, viz: the payment of $300 00 as a fee to counsel to procure an injunction against a sale under the same. And that it is moreover out of the question to suppose that the credit of the defendants suffered more by the execution, than the protest of their paper previously, and judgment entered up against them.

5. That the clerk has not reported the evidence which proves, that the complainant Hobby, carried into the concern $10,000 00 in money, and that the defendants had nothing but their interest in the stock, to which Kelsey had contributed little, and McIntire nothing but his services; shewing that the consideration, which they received for their agreement to pay Hobby $5,500 00 was ample.

6. That the complainants are entitled to interest upon the amount which may be decreed to them, from the date of the dissolution of the copartnership.

PETIGRU AND LESESUE,
Complainants' Sols.

No. 21.

Defendants' Exceptions to Report.

UNITED STATES, *Sixth Circuit, South Carolina District.*

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } In Equity.

Defendants' Exceptions to the Report of the Clerk.

1. The defendants allege, and the clerk ought to have reported that the suit against Schulz and McKinne on the Bridge bills was

brought in the name of S. Kneeland, by the mistake of their attorney, C. Breithaupt, as was proved by his receipt and the letter of S. Kneeland; and the defendants have performed all to which they were bound by their covenant, in tendering the Bridge bills to the complainants.

2. That they ought to be credited, in account between them and complainants, with $2,876 72, as paid to Haines, Johnson & Co. and proved by their account and receipt, instead of $2,706 48, as stated in Exhibit B.

3. That the premium of exchange paid by the defendants on the debts of the concern in New York, and proved from their letter book, ought to have been allowed.

4. That the expenses of Kelsey and McIntire in collecting the debts of the firm, consisting of clerk's hire, travelling expenses, office rent, and several other incidental charges, as stated in their account, ought to be allowed to them.

5. That a commission of 2½ per cent. on the amount collected, and on the amount paid, ought to be allowed to them.

KING & WALKER,
Defendants' Solicitors.

No. 22.

Haines & Johnson's Recpt. and Acc. Current.

Messrs. C. Kelsey & Co.,

To Haines, Johnson & Co. Dr.

1821.			
Sept 13,	To merchandize, cash - - -		$8,84 73
Oct. 3,	do 90 days -	$810 88	
6,	do 90 days -	147 91	
Sept. 29,	do 90 days -	1,303 62	
	60 days interest - -	22 62	
			2,285 03
Oct. 2,	To merchandize, at 4 mos. - -		459 35
1822.			
Jan. 7,	Cash paid insurance on 70 bales cotton, to Hope Ins. Co. - -	$37 25	
Feb. 7,	Cartage on ditto - -	5 69	
	Freight - - -	133 69	
	Storage, &c. - -	10 50	187 13
			$3,816 24

Cr.

1821.		
Oct. 6,	By cash on acc. - -	$400 00
Nov. 3,	do do - -	500 00
1822.		
Jan. 3,	do from Lord & Lee -	41 50

Mar. 2,	F. & H. Sheldon's acc. -	600 00	
7,	Cash - - -	2,000 00	
			3,541 50
Mar. 15,	Balance due H. J. & Co. - - -		274 74
	Discount on draft - - - -		1 98
			$276 72

Received payment of balance, March 15, 1822.
HAINES, JOHNSON & CO.

No. 23.

Proceedings in Case of C. Kelsey & Co. vs. Bank U. S.

UNITED STATES, *District of Georgia.*

To the Honorable the Justices of the Sixth Circuit Court of the United States for the District of Georgia.

Between Charles Kelsey, Charles McIntyre and Alfred M. Hobby, complainants, and the President, Directors and Company of the Bank of the United States, defendants.

Humbly complaining show unto your honors your orators Charles Kelsey, Charles McIntire, and Alfred M. Hobby, merchants, and late copartners under the firm of Charles Kelsey & Co.; that about the year eighteen hundred and nineteen, in the course of some commercial transactions, your orators, under the firm aforesaid, drew three several inland bills of exchange on John McKinne, of the city of Augusta, in favour of Thomas Gardner, late of Savannah, deceased, one for nine thousand five hundred dollars, dated the twenty-fourth of September in the year aforesaid, one other for six thousand five hundred dollars, dated the first day of October in the year aforesaid, and one other for six thousand dollars, dated the same first day of October in the year aforesaid, and amounting in the whole to twenty-two thousand dollars. The first of which bills of exchange, after the drawing thereof, was endorsed by the said Thomas Gardner to one William Scarborough, and by him the same was endorsed to the President, Directors and Company of the Bank of the United States; the second and third of which said bills of exchange were in the same manner, after the making thereof, endorsed by the said Thomas Gardner to the said William Scarborough, and by him to the said President, Directors and Company of the Bank of the United States. That the said several bills were accepted by the said John McKinne, for whose sole accommodation they were drawn, which fact was known to all the parties in the

bill, but not being paid when they became due they were regularly protested for non payment, and thereupon suits were commenced by the said Bank of the United States in this honorable court, on the said several bills hereinbefore mentioned, against your orators, as the drawers, the said John McKinne, as the acceptor, and the said Thomas Gardner, as the indorser thereof, returnable to May term one thousand eight hunded and twenty; on which several suits judgments was recovered in December term of the same year, and executions of *fieri facias* were thereupon issued against the *the* several parties aforesaid on the said several judgments, although as your orators are informed executions of *fieri facias* ought not and could not legally have been sued out but against one of the said defendants at the same time. And your orators further shew unto your honors, that in the suit so brought against your orators for the recovery of the said sum of twenty-two thousand dollars, the amount of the bills so drawn as aforesaid on the said John McKinne and protested for non payment, were included certain other demands which the said Bank of the United States held against your orators, as indorsers on certain notes of one John Tunner, and as indorsers on a note of E. R. Billings & Co.; the whole of which demands of the said bank against your orators, amounted together to the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents, exclusive of interest. That after the recovery of the said judgment against your orators, they came to an understanding with the said Bank of the United Srates and upon the payment of a certain sum of money obtained from them a full release and discharge of so much of their said judgments against your orators as was founded upon the aforesaid indorsements of your orators of the notes of John Tunner and E. R. Billings & Co. amounting to eleven thousand six hundred and seventy-three dollars and thirty-three cents, leaving only so much of the said judgment unsatisfied as was founded upon the aforesaid three bills of exchange drawn by your orators on the said John McKinne and protested for non-payment as aforesaid. And your orators further shew unto your honors that they have been informed and so they expressly charge that after the recovery of the said judgments on the said three bills of exchange, amounting as aforesaid to twenty-two thousand dollars against your orators as the drawers, the said John McKinne, as the acceptor and the said Thomas Gardner as indorser, they the said John McKinne and Thomas Gardner, or one of them or some other person or persons for them or one of them did satisfy and pay to *to* the said President Directors and Company of the Bank of the United States the full amount of their claim arising from the said three bills of exchange, before mentioned, drawn by your orators on the said John McKinne and protested for non-payment as aforesaid by the payment of the judgments so recovered as aforesaid on the said bills of exchange against the said Thomas Gardner as indorser, or by the payment of the judgment so recovered against the said John McKinne, the

acceptor, or one of them together with the whole of the taxed costs on the several judgments so recovered against the said Thomas Gardner, the said John McKinne and your orators and any other of the parties to the said bills of exchange. And your orators further shew unto your honors that they have been informed and believe that the said Thomas Gardner who hath lately departed this life, did in his life time receive from the said John McKinne various large sums of money and property and evidences of debt which were intended to be appropriated to the payment of the judgments of the Bank of the United States founded on the said three bills of exchange, before mentioned. And your orators further shew unto your honors that notwithstanding the payment and extinguishment of the demand of the said President Directors and Company of the Bank of the United States in manner aforesaid, they have taken out execution on their said judgment hereinbefore mentioned against your orators, and have directed the marshal of the United States for the district of Georgia to levy on the property of your orators for a large sum of money, exceeding the sum of five thousand dollars as a part of the sum originally due and owing on the said three bills of exchange, hereinbefore mentioned, which levy has accordingly been made by the said marshal. And your orators have applied to the said President Directors and Company of the Bank of the United States through their agent, and requested that satisfaction might be entered of record on the said judgment against your orators, the whole thereof having been in manner aforesaid satisfied and discharged, but now so it is may it please your honors that the said President Directors and Company of the Bank of the United States combining and confederating with divers persons to your orators unknown, whose names when discovered they pray may be inserted herein, with apt and proper words to charge each and every of them to injure and harrass your orators, refuse under various false and unjust pretences to comply with the reasonable request of your orators in this behalf; which actings and doings of the said President Directors and Company of the Bank of the United States and their confederates, are contrary to equity and good conscience, and tend to the great injury of your orators. In tender consideration whereof and for so much as your orators are remediless but by the interposition of this honorable court, where matters of this kind are properly cognizable. To the end therefore that the said President Directors and Company of the Bank of the United States and their confederates when discovered, may true and perfect answer make to all and singular the premises, and that in as full and ample a manner as if the same were again particularly interrogated, and more especially that the said President Directors and Company of the Bank of the United States may set forth and declare under their corporate seal whether they did not in the term of December, one thousand eight hundred and twenty, of this honorable court recover a judgment against your orators under the firm of Charles Kelsey & Co., for thirty-two thousand nine hundred and

thirty-three dollars and thirty-three cents for principal, and two thousand four hundred and sixty-nine dollars and ninety-one cents for interest, besides costs of suit and charges of protest. Whether the said judgment was not founded in part on the aforementioned three bills of exchange amounting to twenty-two thousand dollars drawn as aforesaid by your orators on the said John McKinne and protested for non-payment, and whether the remaining part of said judgment was not founded on certain notes of one John Tunner and E. R. Billings & Co. on which your orators are endorsers, or how otherwise. That they may set forth and declare whether your orators have not been released and discharged by the said President Directors and Company of the Bank of the United States from so much of the said judgment, principal, interest and costs of protest as was founded on the notes of John Tunner and E. R. Billings & Co. on which your orators were endorsers: whether the said President Directors and Company of the Bank of the United States did not at some time, and when, receive from Thomas Gardner and John McKinne or one of them or from some other persons or person for and on account of the said Thomas Gardner and John McKinne or one, and which of them full satisfaction and payment of the judgment, or one, or which of them, recovered by the said President Directors and Company of the Bank of the United States against the said John McKinne as the acceptor, and against the said Thomas Gardner as the indorser of the aforesaid three bills of exchange amounting to twenty-two thousand dollars, and drawn by your orators as aforesaid on the said John McKinne, and protested for non-payment: whether executions of *fieri facias* were not taken out at the same time on the judgments recovered against your orators as the drawers, John McKinne as the acceptor, and Thomas Gardner as the indorser of the said three bills of exchange: whether they have now any claim against your orators or the said Thomas Gardner or the said John McKinne by judgments or otherwise on the said three bills of exchange drawn by your orators on the said John McKinne for twenty-two thousand dollars and protested for non-payment as aforesaid, and if they have, how much they do claim; whether the execution, founded on the aforementioned judgment recovered by the said President Directors and Company of the Bank of the United States against your orators for the said sums of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents principal, and two thousand four hundred and sixty-nine dollars and ninety-one cents interest, besides costs of suit and charges of protest, is not now in the hands of the marshal of the district of Georgia, and whether he has not been directed to levy for five thousand dollars or some other large sum, and how much, on the goods and chattels lands and tenements of your orators, and whether he has not levied thereon; whether the sum so directed to be levied by the said marshal under the said execution aforesaid, is claimed by the said President Directors President and Company of the Bank of the United States on account of the indorsements of your orators on

the notes of the said John Tunner and E. R. Billings & Co. or either of them, or whether it is claimed on account of the said other bills of exchange drawn as aforesaid by your orators on the said John McKinne and protested for non-payment, or both, and which of them; and that the said President, Directors and Company of the Bank of the United States may by the decree of this honorable court be compelled to enter satisfaction on the aforesaid judgment so recovered by them against your orators, as hereinbefore stated, and that they may by injunction from this honorable court be restrained from proceeding at law on their said judgment against your orators, and that your orators may have such other and further relief as the nature of their case may require and as may be agreeable to equity and justice. May it please your honors to grant to your orators a writ of distringas against the said President Directors and Company of the Bank of the United States to compel them to appear at a court to be held at Milledgeville, in and for the district of Georgia on the sixth day of May next, then and there to answer the premises and to abide by and perform such order and decree of the court therein as may be agreeable to equity and good conscience. And your orators aver that they are citizens of the State of Georgia, and that the said President Directors and Company of the Bank of the United States is a corporation and body politic created by an act of the Congress of the United States, passed on the tenth day of April, one thousand eight hundred and sixteen, entitled an act to incorporate the subscribers to the Bank of the United States, and are thereby made able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all State courts having competent jurisdiction, and in any circuit court of the United States. And that the said President Directors and Company of the Bank of the United States are citizens of the State of Pennsylvania.

DAVIS & BERRIEN,
Complainants' Solicitors.

UNITED STATES, *District of Georgia.*

Personally appeared Charles Kelsey, one of the complainants, who being duly sworn, deposed and said that the matters of fact set forth in the aforegoing bill, so far as they depend on the knowledge and information of the defendant, are true, and so far as they depend on the knowledge or information of any other person, he believes to be true.

CHARLES KELSEY.

Sworn to this 30th January, 1823, before me,
GEO. GLEN, *Clerk.*

Bill of discovery relief and for injunction, filed first of February, 1823.

GEO. GLEN, *Clerk.*

Let an injunction issue on the complainants' giving security for $5,590 00. 6th February, 1823.

J. CUYLER, *D. J.*
United States, District of Georgia.
GEO. GLEN, *Clerk.* [L. S.]

The President of the United States to the President Directors and Company of the Bank of the United States:

For certain causes offered before the sixth circuit court of the United States for the district of Georgia, you are commanded and strictly enjoined that laying all matters aside, and notwithstanding any excuse, you appear before the said court, at Milledgeville in the district aforesaid, on the sixth day of May next, to answer concerning those things which be then and there objected to you, and to do further and receive what the said court shall have considered in this behalf; and this you may in no wise omit under the penalty of five hundred dollars, and have then this writ.

Witness the honorable John Marshall, chief justice of the United States, this first day of February one thousand eight hundred and thirty-three.

DAVIS & BERRIEN,
Solicitors for Complainants.

Served a copy on Richard W. Habersham, Esquire, 1st February, 1823.

JN. H. MOREL, *Marshal.*

DISTRICT OF GEORGIA, *Marshal's Office.*

I have served a copy of the within on the Bank of the United States. The return of

JAMES HILLS, *D. M.*

CHARLES KELSEY and others complainants
and
THE PRESIDENT, DIRECTORS AND COMPANY OF THE BANK OF THE UNITED STATES, defendants. } In Equity.

And your orators by leave of this honorable court, by way of amendment and enlargement of their said bill of complaint further say, that although the said John McKinne and Thomas Gardner or one of them or some other person or persons for them or one of them, did satisfy and pay to the said president, directors and company of the Bank of the United States the full amount of their claim arising from the said three bills of exchange before mentioned drawn by your orators on the said John McKinne and protested for non-payment as aforesaid, by the payment of the judgment so recovered as aforesaid, on the said bills of exchange against the said Thomas Gardner, the indorser or by payment of the said judgment

against the said John McKinne, the acceptor, or one of them, together with all of the taxed costs on the said several judgments, yet that no satisfaction having been entered of record on the said judgment against the said Thomas Gardner or the said John McKinnie. Your orators have no means and are utterly unable to establish the fact of such payment, but by the answer and admission of the said president, directors and company of the Bank of the United States and by way of further amendment and enlargement of their said bill of complaint your orators say that although they believe the fact to be as charged in their said bill that the said Thomas Gardner in his life time received from the said John McKinne various large sums of money, property and evidence of debts which were intended to be appropriated to the payment of the judgments of the Bank of the United States founded on the said three bills of exchange before mentioned, and which as your orators believe and charge great part thereof were so appropriated, yet that they have no means at law of ascertaining the fact or of proving the nature and amount or value of such sums of money, property and evidences of debt, and can only do so by the aid of this honorable court and by obtaining the answer of the defendants to the several matters alledged in their said bill.

Wherefore your orators pray, as they have before prayed in and by their said bill, and for such further and other relief as to this honorable court may seem meet and agreeable to equity and good conscience of their case.

DAVIES & BERRIEN,
Complainants' Solicitors.

UNITED STATES, *District of Georgia.*

Personally appeared Charles Kelsey, one of the complainants, who being duly sworn deposed and said that the mattera of fact set forth in the aforegoing amendments to the original bill of complainants, so far as they depend on deponent's knowledge and belief are true, and so far as they depend on the knowledge or information of any other person he believes them to be true.

CHAS. KELSEY.

Sworn to before me this 22 April 1823.

GEO. GLEN, *Clerk.*

Served a copy of the above on R.W. Habersham, the defendants' solicitor by leaving the same at his office this 23d April, 1823.

EDWD. A. DAVIES.

Sworn to before me this 23d April 1823.

GEO. GLEN, *Clerk.*

Amended bill filed April 23d, 1823.

G. GLEN, *Clerk.*

UNITED STATES, *District of Georgia.*
In the Sixth Circuit.

Between CHARLES McINTIRE and ALFRED M. HOBBY, complainants
and
THE PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES defendants.
} In Equity.

The answer and disclaimer of the president directors and company of the Bank of the United States to the original and amended bill of complaint of Charles Kelsey Charles McIntyre and Alfred M. Hobby complainants.

The said the president, directors, and company of the Bank of the United States, defendant, saving and reserving to itself now and at all times hereafter all manner of advantage and benefit of exception that may be had and taken to the many untruths, uncertainties, insufficiencies and imperfections in the said complainants' bill of complaint contained for a full and perfect answer thereunto, or to so much thereof as it materially concerns this defendant to make answer unto, answereth and saith that this defendant admits that the said complainants by their name and firm of Charles Kelsey & Co. did draw three several inland bills of exchange on John McKinne of the city of Augusta in favor of Thomas Gardner, now deceased, one for nine thousand five hundred dollars, one for six thousand five hundred dollars, and one other for six thousand dollars amounting in the whole to twenty-two thousand dollars as in the complainants' said bill is stated and that the said bills of exchange were indorsed as stated in the said bill of the complainants' to this defendant before the same became due and payable according to the tenor and effect thereof, and were discounted by this defendant and the nett proceeds thereof placed to the credit of the said Thomas Gardner on the books of this defendant and were drawn for and were paid out to the checks of the said Thomas Gardner on this defendant, but for whose accommodation the said bills were actually drawn, or whether they were accommodation bills, or not, this defendant is not informed. This defendant also admits that the said bills of exchange were not paid to this defendant at their maturity, and were regularly protested for non-payment and that suits were thereupon commenced by this defendant in this honorable court against the said complainants, as drawers, the said John McKinne as acceptor, and against the said Thomas Gardner as indorser thereof returnable to the May term of the court in the year one thousand eight hundred and twenty, on which several suits judgments were as this defendant is informed and believes, recovered against the said respective parties to the said bills abovementioned, at December term of the said court in the said year, and that executions of *fieri facias* were as this defendant is also informed and believes, thereupon issued against the several parties as afore-

said on the said several judgments at the same time. And this defendant also admits that in the suit so brought against the said complainants for the recovery of the said sum of twenty-two thousand dollars the amount of the aforesaid bills of exchange were included certain other demands which this defendant held against the said complainants as indorsers on certain notes of one John Tunner, and is indorsed on a certain note of E. R. Billings and Company, the whole of which demands of this defendant against the said complainants amount together to the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents, exclusive of interest for which sum and the interest, then due thereon, a judgment was entered against the said complainants as stated by the said complainants in the said bill, and execution of fieri facias was thereupon issued against the goods and chattels lands and tenements of the said complainants for the amount of the said judgment, that is to say for the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents of principal, and for two thousand four hundred and sixty-nine dollars and ninety-one cents of interest, and for twenty-one dollars for the costs of protest all of which were included in the said judgments at the filing thereof, and also for eighteen dollars and twenty-six cents for the costs of suit. And this defendant doth also admit that after the recovery of the said judgment against the said complainants, they, the said complainants came to an understanding and agreement with this defendant, and upon a transfer of this defendant of certain property but not as stated by the said complainants, upon payment of a certain sum of money the said complainants obtained from this defendant a release and discharge for so much of the said judgment so recovered against them by this defendant, as aforesaid, as was founded upon their indorsements of the notes of John Tanner and of the said notes of E. R. Billings and Company, as aforesaid, amounting to the sum of eleven thousand six hundred and seventy-three dollars and seventy-three cents which sum, however, included not only the principal but the interest and costs of protest then due on the notes of the said John Tunner and on the note of E. R. Billings and Company, but included no part of the principal, interest or costs of protest of the said three bills of exchange drawn by the said complainants upon the said John McKinne.

This defendant admits that on or about the thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-one, there was received at the office of discount and deposit of this defendant at Savannah from the attorney of the said office and who was also the attorney of record of this defendant in the said suit against the said complainants as aforesaid, in part payment of the said judgments, or in part of so much of the said judgments so obtained against the said John McKinne, Thomas Gardner and the said complainants as was founded upon the three bills of exchange so drawn by the said complainants as aforesaid, and also the further sum of three hundred and sixty-five dollars on the

same account, which several sums so paid into the said office of this defendant by their said attorney, this defendant understood, were the proceeds of sales of certain property of the said John McKinne, but whether the same was so, or what was the description of the property so sold, this defendant is not informed nor knows. This defendant further admits that there was received into the said office of this defendant in Savannah, on or about the twenty-eighth day of April, in the year eighteen hundred and twenty-one, from the said Thomas Gardner in his life time, the further sum of eighteen thousand four hundred and seventy-seven dollars and forty-two cents or thereabouts, being the amount of the balance due to this defendant after the payment of the above two sums of five thousand dollars, and three hundred and sixty-five dollars, as aforesaid, by the said Thomas Gardner on the said judgment so obtained by this defendant against him as aforesaid, as the indorser of the said three bills of exchange so drawn as aforesaid by the said complainants on the said John McKinne, and indorsed by the said Thomas Gardner, as this defendant is informed and believes, did at the same time settle and pay to a person or persons, authorized to receive the same, all the costs which had been incurred in obtaining the said judgment against the said John McKinne, and also a judgment obtained against the said William Scarborough, as another indorser on two of the said three bills of exchange. But what was the amount so paid by the said Thomas for costs as aforesaid this defendant cannot say, as the same was paid, to the said attorney of this defendant, as this defendant is informed and believes; but whether the said sums of money so paid by the said Thomas Gardner into the office of this defendant as aforesaid, was paid with his own proper funds, or with the funds of the said John McKinne, or with the proceeds of the sale of the property of the said John McKinne, or from or out of collections made for the said John McKinne and on his account, this defendant is not informed; but this defendant did, at that time, believe that the same was paid by the said Thomas, with the proper monies of the said Thomas; and this defendant further answers and saith, that at and before the time that this defendant so received at the office of this defendant in Savannah as aforesaid, from the said Thomas Gardner, the said sum of eighteen thousand four hundred and seventy-two dollars and forty-two cents, as aforesaid, it was expressly stipulated and agreed between the duly authorized agent of this defendant in Savannah, in behalf of this defendant and the said Thomas Gardner, that this defendant should make and execute, whenever thereto requested by the said Thomas Gardner, his executors, administrators, or assigns, an assignment of so much of the said judgment so had and obtained against the said complainants by this defendant as aforesaid, as was then due and owing thereon and unsatisfied, for and in consideration of the said sum of money so to be paid by the said Thomas; and this defendant further answering saith, that the said Thomas Gardner, some time in the year

one thousand eight hundred and twenty-two, departed this life, without having received from this defendant any assignment of the said judgment against the said complainantss; but that after the death of the said Thomas, one Anne Gardner, his widow, and, as this defendant is informed and believes, the lawful administratrix of all and singular the goods and chattels, rights and credits which were of the said Thomas, did require and demand of this defendant, that this defendant would be, in pursuance of the said agreement and undertaking so made with the said Thomas, in his lifetime, and in completion thereof made and execute an assignment to her, as the rightful administratrix of the said Thomas Gardner as aforesaid, of so much of the said judgment so obtained as aforesaid, against the said complainants by this defendant on the said three bills of exchange so drawn by the said complainants as aforesaid, as would be equal to the amount so paid by the said Thomas, in his lifetime, to this defendant as aforesaid, and that in consequence of the said agreement of the said Ann to this defendant, and in pursuance of said agreement so made by this defendant with the said Thomas, and in consideration of the said sum of money so paid to this defendant by the said Thomas as aforesaid, this defendant did by its certain deed of assignment, bearing date the fourth day of January, in the year of our Lord eighteen hundred and twenty-three, and made and executed in the name of this defendant, and in its behalf, by one John Cumming, the duly authorized attorney of this defendant for that purpose, did assign, transfer and set over to the said Ann Gardner, as administratrix of the estate of the said Thomas, so much of the said judgment, so obtained as aforesaid, against the said complainants, as was founded on the said three bills of exchange so drawn as aforesaid by the said complainants, and as had not been paid by the said John McKinne, or by the proceeds of the sale of his property; and also the execution or executions which had been issued thereon against the goods and chattels, lands and tenements of the said complainants, to have and to hold the same to the said Ann Gardner, as administratrix as aforesaid, for the sole use and benefit of the estate of the said Thomas, and at her sole risk, and did thereby give and grant to the said Ann power to take and pursue all necessary and legal means to recover and collect the balance due on the said judgment and execution for the use and benefit of the said estate, with power to appoint one or more attorney or attorneys under her with like powers, all of which will more fully appear by reference to the said assignment a copy whereof is hereunto annexed, marked Exhibit A, and which said assignment this defendant hereby ratifies and confirms, and to the power of attorney made and executed by this defendant to the said John Cumming, whereby he was authorized, as the attorney of this defendant, in the name of this defendant, to make and execute the said assignment, a copy of which power is also hereunto annexed, marked B; and both of which Exhibits, marked A and B, this

defendant prays may be taken as a part of its answer. And this defendant further answering, saith, that since the receipt of the said sum of money so paid as aforesaid by the said Thomas Gardner and the transfer and assignment of the said judgment of this defendant against the said complainants to the said Ann, that this defendant hath not any claim against the said complainants or the said John McKinne, or the said Thomas Gardner, or the estate of the said Thomas by judgments or otherwise on the said three bills of exchange so drawn by the said complainants on the said John McKinne as aforesaid, nor does this defendant know that the said execution which issued on the said judgment so obtained by this defendant thereon against the said complainants, as described in the said bill of the said complainants, or any other execution founded on the said judgment, is in the hands of the marshal of the district of Georgia; nor does this defendant know that the said marshal has been directed to levy for five thousand dollars or any other sum of money on the goods and chattels, lands and tenements of the said complainants or any other person under or by virtue of the said judgment and execution or either of them. But this defendant presumes that if the said or any other execution founded on the said judgment is in the hands of the marshal of the district of Georgia, it is in his hands by the order and authority of the said Ann Gardner by virtue of the power vested in her by the said assignment and that if any such order has been given to levy for any sum of money whatever on the goods and chattels, lands and tenements of the said complainants, under the said execution, that the same has been ordered and directed by the said Ann by virtue of the same or some other authority. And this defendant doth disclaim all right, title, or interest in the said judgment and in the execution founded thereon, or either of them, nor doth this defendant claim or pretend to have or claim any right, title or interest in the said judgment, and in the execution founded thereon, or either of them, nor doth this defendant claim or pretend to have any right, title, or interest thereon. And this defendant doth disclaim further, any knowledge of the proceedings which the said complainants alleged to have been had upon the said judgment, or the execution which issued thereon, or any order to the said marshal to levy, or that the said marshal hath made any levy under or by virtue of the said judgment and execution since the said fourth day of January, eignteen hundred and twenty-three, or any other proceeding of the said marshal, under or by virtue thereof, since the said day or since the execution and delivery of the said assignment by this defendant to the said Ann Gardner. And this defendant doth deny all unlawful combination and confederacy unjustly charged against this defendant, in and by the said complainants said bill of complaint, without that, that any other matter or thing in the said complainants said bill of complaint contained material or necessary for this defendant to make answer unto, and not therein or hereby well and sufficiently answered unto

confessed or avoided, traversed or denied, is true, all which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall award; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

HARRIS & HABERSHAM,
Solicitors for Bank of the U. S.

Personally appeared John Cumming, Esq., of the city of Savannah, president of the office of discount and deposit, of the president directors and company of the Bank of the United States at Savannah, who being duly sworn saith, that the facts set forth in the foregoing answer, so far as the same relate to his acts and deeds are true, and so far as they relate to the acts and deeds of others, he beleives them to be true.

JNO. CUMMING.

Sworn to before me, this 30th April, 1823.
ED. HARDEN, *J. J. C. C. C.*

And in testimony of the foregoing answer being the true and proper answer of the said the president, directors and company of the Bank of the United States, consenting to abide by, and be bound by the same, the said the president, directors and company of the Bank of the United States, hath hereunto affixed its corporate seal this sixteenth day of May, in the year of our Lord one thousand eight hundred and twenty-three.

Attest: THO. WILSON, *Cash.* [L. S.]

Exhibit A.

THE PRESIDENT, DIRECTORS AND COMPANY OF THE BANK OF THE UNITED STATES, *vs.* CHARLES KELSSY & Co.	Judgment in the Sixth Circuit Court, Ga. Dis. Dec. term, 1820, and Execution thereon.

Judgment for principal - - - - -	$32,933 33
For interest - - - - - -	2,469 91
Costs of protest - - - - -	21 00
Cost of suit - - - - - -	18 26
	35,442 50
Received on sales of Mr. McKinne's property -	5,365 00
	$30,077 50
Released to Charles Kelsey & Co., by the plaintiffs being so much of the above judgment as was founded on the notes of John Tunner, and the note of E. R. Billings & Co., principal, interest, and cost of protest -	11,673 33
	$18,404 17

UNITED STATES, *District of Georgia.*

Whereas Thomas Gardner, late of Savannah, merchant, in his life time, to wit, on the — day of April, in the year of our Lord one thousand eight hundred and twenty-one, in consideration that the president, directors and company of the Bank of the United States, would assign and transfer all the right, title and interest of the said president, directors and company of the Bank of the United States, in the aforesaid judgment and the executions which issued thereon to him the said Thomas, his executors, and administrators, did pay to the said president, directors and company, the sum of eighteen thousand four hundred and four dollars and seventeen cents, of lawful money, whereupon the said the president, directors and company of the Bank of the United States, did agree with the said Thomas Gardner, to transfer the said judgment and the execution thereon, to the said Thomas, his executors and administrators, and to vest him and them, or any of them, with such powers as would be requisite to collect the balance due thereon from the said Charles Kelsey & Co., by levy and distress, under the same execution or otherwise.

Now know ye, that the said president, directors and company of the Bank of the United States, in pursuance with their said agreement so made with the said Thomas Gardner, in his life time, for and in consideration of the said sum of eighteen thousand four hundred and four dollars seventeen cents, being the balance due on the said judgment unto them well and truly paid by the said Thomas Gardner, as aforesaid, the receipt whereof is hereby acknowledged, have transferred, assigned and set over, and by these presents, do transfer, assign and set over unto Ann Gardner, the administratrix on all and singular, the goods and chattels, rights and credits of the said Thomas Gardner, now deceased, the aforesaid judgment and execution which has issued thereon, and all the moneys now due as hereafter to become due thereon, and payable therefrom, and all the benefit and advantage thereof, and all the estate, right, title, interest, and demand of the said plaintiffs in and to the said judgment and execution, and the moneys which may hereafter be collected thereon or thereunder. To have, hold, receive, and take and enjoy the said judgments and execution, and the whole the moneys which may be received thereon to the said Ann Gardner, administratrix, as aforesaid, for the sole use and benefit of the estate of the said Thomas Gardner, and at her sole risk. And it is hereby expressly understood and agreed, that the said president, directors and company of the Bank of the United States, shall not in any wise however, be responsible to the said Ann Gardner, or to the estate of the said Thomas Gardner, for any loss, deficiency or damage, which the said Ann or the estate of the said Thomas shall or may sustain or suffer, by reason of any defect in the said judgment and execution, or either of them, or in case the said Charles Kelsey and Company, shall prove to be insolvent or unable or un-

willing to pay the balance which may be due on the said judgment or for any proceedings which may hereafter be had, under the said judgment and execution, or either of them. And the said the president, directors and company of the Bank of the United States, do by these presents make, constitute, and appoint the said Ann Gardner, to be their true and lawful attorney, in their name to sue and prosecute the said execution, or any renewal thereof, which has or may hereafter issue from the said judgment, and to take all necessary and lawful means for the recovery of the balance due thereon; and to give a release or discharge for the same, or any part thereof when paid, and one or more attorneys under her, for the purpose aforesaid, to make and constitute, and again at pleasure to revoke, by these presents allowing, ratifying, and confirming, whatsoever the said Ann Gardner, or her substitute or substitutes, shall or may lawfully do, or cause in and about the premises, by virtue of these presents.

In witness whereof John Cumming, the duly authorized and constituted attorney of the said the president directors and company of the Bank of the United States, hath hereunto set his hand and seal as, of, and for, the seal of the said the president directors and company of the Bank of the United States this fourth day of January in the year of our Lord one thousand eight hundred and twenty-three.

The president directors and company of the Bank of the United Sates, by John Cumming, their attorney.

Sealed and delivered in the presence of—"the word three in" the date being first substituted for two.

GEO. D. SWEET, *Not. Pub.*

Exhibit B. Copy.

Know all men by these presents, that the president, directors and company of the Bank of the United States have constituted made and appointed and by these presents, do constitute make and appoint John Cumming president of the office of the Bank of the United States at Savannah, in the State of Georgia, and James Hunter cashier of the same office their true and lawful attornies joint and several for them and in their name and behalf to institute and commence suits and actions at law or in equity in any court or before any judge, magistrate or justice or other judicial tribunal of the State of Georgia or in any court of the United States in and for the said State, to file bills and declarations, pleas and other needful proceedings, and generally for the president directors and company of the Bank of the United States, and in their name and in their behalf to do all such matters and things in the premises as may be needful and proper to be done, and to them shall seem fit and expedient in commencing and prosecuting such suits

and actions as fully and effectually as if the same were herein particularly recited and set forth, and also for the president, directors, and company of the Bank of the United States, attornies one or more under them or either of them to appoint and again at pleasure to revoke; and for the president directors and company of the Bank of the United States and in their name and behalf to retain and employ such attorney or attorneys at law, solicitor, or solicitors or other suitable persons as to them shall seem fit; and for the president, directors, and company of the Bank of the United States, and in their name and behalf, to give all needful warrants of attorney or other authority or authorities that may be requisite or expedient: hereby giving to the said John Cumming, president, and James Hunter, cashier, and to each of them full power and authority in the premises, and ratifying and confirming whatsoever they or either of them may lawfully do therein.

In witness whereof, the president, directors, and company of the Bank of the United States have caused their common seal to be affixed at Philadelphia, this twelfth day of May, A. D. one thousand eight hundred and twenty-one.

[L. S.]

Signed L. CHEVES, *President.*

Signed. Attest: THO. WILSON, *Cashier.*

United States:

Be it known that on this twelfth day of May, in the year of our Lord one thousand eight hundred and twenty-one, I, Clement C. Biddle, esquire, notary public for the Commonwealth of Pennsylvania, duly commissioned, and by law authorized, residing in the city of Philadelphia, do hereby certify and attest that the seal affixed to the letter of attorney hereunto annexed is the common seal of the president, directors, and company of the Bank of the United States: that the signature "L. Cheves, president," is the proper signature and handwriting of Langdon Cheves, Esquire, president of the said Bank of the United States, and the signature "Thos. Wilson, cashier," is the proper signature and handwriting of Thomas Wilson, Esquire, cashier of said bank.

In testimony whereof, I have hereunto set my hand, and affixed my notarial seal of office, the day and year first above written.

[L. S.]

Signed CLEMENT C. BIDDLE,
Notary Public.

Between the PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES, Defendants,
and
And CHARLES KELSEY and Complainants.
} In Equity.

And now on this 6th day of May, 1823, come the said defendants, by their solicitors, Harris & Habersham, and appear to the bill of the complainants in the above case.

HARRIS & HABERSHAM,
Defendants' Solicitors.

Filed 8th May, 1823.

G. GLEN, *Clerk.*

Between CHAS. KELSEY and others, Complainants,
and
The PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES, Defendants.
} In Equity.

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied to by these repliants, without that that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things these repliants are and will be ready to aver and prove as honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

DAVIES & BERRIEN,
Complainants' Solicitors.

Replication filed the 4th October, 1823.

GEO. GLEN, *Clerk.*

Between CHARLES KELSEY, ARCHIBALD MCINTYRE, AND ALFRED M. HOBBY, Complainants,
and
The PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF THE UNITED STATES and ANN GARDNER, Executrix of the last will and testament of THOMAS GARDNER, Defendants.
} In Equity.

The said complainants, by way of amendment to their said bill, leave of the court having been first had and obtained for this purpose, further charge that the said Thomas Gardner in his life time, well knowing that the said bills of exchange so drawn by your orators on the said John McKinne in favor of the said Thomas

Gardner were drawn by your orators solely for the benefit and accommodation of the said John McKinne, and with a view to protect himself against the responsibility which he had assumed by indorsing the said bills, did some time after the protest thereof, as your orators believe, in the year eighteen hundred and nineteen receive from the said John McKinne various sums of money and securities for money which were to be applied to the credit of the said bills of exchange, as the judgment recovered on them and which as your orators charge were more than sufficient to pay the same if they had been so applied, and if proper exertions had been made to collect the amounts due on the said securities respectively. That the account hereunto annexed marked Exhibit , and which your orators pray may be taken as a part of their amended bill, is a true copy of an account, as your orators charge, made out by the said Thomas Gardner in his life time, in which is exhibited a statement of a part of the monies and securities received by him from the said John McKinne. And your orators further charge that the said Thomas Gardner departed this life some time in the year one thousand eight hundred and twenty, intestate. That the said Ann Gardner applied for and obtained letters of administration in due form of law on the estate and effects of the said Thomas Gardner, and took upon herself the administration thereof, and possessed herself of the said estate and effects, books, and papers of the said Thomas Gardner. And your orators further shew unto your honors that James Erwin's note in the annexed account mentioned, with the interest due thereon, estimated together at the sum of three thousand dollars, has since the statement of the said account been settled and paid to the said Thomas Gardner in his life time, or to the said Ann Gardner, administratrix as aforesaid, since his death, or to some person acting as the agent or under the authority of the said Ann Gardner. That the note of A. & B. Herring, also mentioned in the said account, has also been settled, and the amount due thereon paid to the said Thomas Gardner in his life time, or to the said Ann Gardner since his death, or to some person acting as her agent or under her authority. That the note of James Mitchell also mentioned in the said account has also been paid, and the amount hereof received by the said Thomas Gardner in his life time, or by the said Anne Gardner since his death, or by some person acting as her agent or under her authority. That the note of Henry Gardner, also mentioned in the said account has been paid, and the amount received by the said Thomas Gardner in his life time, or the said Ann Gardner since his death, or some person acting as her agent or under her authority. The whole of which should be credited on the said judgment recovered by the Bank of the United States on the said bills of exchange. And your orators further shew to your honors that in addition to the said items in the said account hereto annexed, the said John McKinne, as your orators are informed and believe, being indebted to the Bank of Augusta, deposited with them as security certain mortgages and evi-

dences of debt which were held by him, but which your orators are unable to describe particularly, exceeding greatly in amount the sum due to the said Bank of Augusta by the said John McKinne; that the said John McKinne gave to the said Thomas Gardner in his life time, or to the said Ann Gardner since his death, an order upon the said Bank of Augusta for the payment of any sum which might be realized from the said mortgages and evidences of debt after the payment of the said debt due by the said John McKinne to the said Bank of Augusta, and your orators are advised and believe that there will be remaining after the payment of the debt due to the Bank of Augusta an excess amounting to five thousand dollars or some other large sum, and which should be applied also to the payment of the judgment recovered by the said Bank of the United States on the said bills of exchange. And your orators further shew unto your honors that as a further security for the payment of the said bills of exchange, the said Thomas Gardner in his life time received from the said John McKinne a promissory note of one Reese on which there was due and owing the sum of four thousand five hundred dollars or some other large sum, but which your orators are unable particularly to describe, which note, as your orators have been informed and believe, has been paid, and the amount received by the said Thomas Gardner in his life time, or that the same was in some way disposed of by the said Thomas Gardner, the amount whereof ought also to be applied to the payment of the said judgment recovered by the Bank of the United States on the said bills of exchange, because your orators are now informed, and so they charge the fact to be, that the said Thomas Gardner in his life time had paid to the said Bank of the United States the full amount due on the judgment recovered by the said bank on the said bills of exchange, after deducting from said the judgment two sums of five thousand dollars, and three hundred and sixty-five dollars, which had previously been paid on the said judgment by means of a sale made, as your orators charge, of certain property belonging to the said John McKinne, or by means of so much money received from the said John McKinne by the said Thomas Gardner in his life time. That after the death of the said Thomas Gardner, the said Ann Gardner applied to the said Bank of the United States and received from them an assignment of the judgment held by them against your orators, and founded on the said bills of exchange to the extent of the balance then due thereon, and represented to be eighteen thousand four hundred and four dollars and seventeen cents, which judgment the said Ann Gardner, as administratrix as aforesaid, now holds and is pressing the execution founded thereon against your orators, notwithstanding, as your orators charge, the several sums of money received by the said Thomas Gardner in his life time from the said John McKinne, or the sums received and collected from the various securities passed by the said John McKinne to the said Thomas Gardner in his life time, or to the said Ann Gardner, administratrix as aforesaid, since his death, are sufficient to satisfy and discharge

the amount due on the said judgment, or that if they are not, that the said Thomas Gardner or the said Ann Gardner, administratrix as aforesaid, are chargeable with any deficiency there may be, inasmuch as the same will have arisen from the inattention and want of due diligence on the part of one or both of them in the collection of the money due on the said securities. And your orators have frequently applied to the said Ann Gardner, administratrix as aforesaid, and requested her to come to an account with your orators respecting the money received by the said Thomas Gardner in his life time from the said John McKinne, or from the securities placed by him in the hands of the said Thomas Gardner in his life time, or of the said Ann Gardner, administratrix as aforesaid, since his death, to be applied to the payment or extinguishment of the balance due on the said judgment in this bill mentioned, and which has been assigned as aforesaid by the said Bank of the United States to the said Ann Gardner, administratrix as aforesaid: and that she would enter satisfaction on the said judgment, and cease to pursue your orators under the execution issued thereon: all which reasonable requests of your orators the said Ann Gardner under various unfounded pretences refuses to comply with, which actings and doings on the part of the said Ann Gardner, administratrix as aforesaid, are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises. In tender consideration whereof, and forasmuch as your orators are remediless in the premises except by the interposition of a court of equity where matters of this nature are properly cognizable, to the end, therefore, that the said Ann Gardner, administratrix as aforesaid, may true and perfect answers make upon her corporal oath to all and singular the matters herein stated, as well as the matters and things in your orators original bill, of which this is an amendment, contained, as fully and particularly as if the same were herein again repeated, and she particularly interrogated, and that not only as to the best of her knowledge and remembrance, but also as to the best of her information, hearsay, and belief: and more especially that she may answer and set forth whether the said judgment of the president, directors, and company of the Bank of the United States in the sixth circuit court of the United States for the the district of Georgia against your orators, does not include the amount of the several bills of exchange mentioned in the original bill of which this is an amendment, drawn by your orators on the said John McKinne, and indorsed by the said Thomas Gardner. Whether the said judgment to the extent of the balance due hereon and amounting to eighteen thousand four hundred and four dollars and seventeen cents was not assigned to the said Ann Gardner, as administratrix aforesaid, on the fourth day of January, one thousand eight hundred and twenty-three, in consideration of the like sum paid by the said Thomas Gardner in his life time.

Whether the copy of said assignment annexed to the answer of the president directors and company of the Bank of the United

States to the original bill of your orators and marked Exhibit A, is not a true copy of the said assignment, and if it is not that the said Ann Gardner may exhibit and produce the said original assignment, whether the account hereto annexed and marked Exhibit is not a true copy of an account made out and stated by the said Thomas Gardner in his life time with the said John M'Kinne on some occasion and at some particular time, and on what occasion? and at what time? and if not, that the said Ann Gardner may exhibit and produce a true statement of the account between the said Thomas Gardner in his life time, and the said John McKinne, embracing their transactions together, from the sixteenth of February one thousand eight hundred and nineteen to the period of the death of the said Thomas Gardner. That the said Ann Gardner may in manner aforesaid set forth and declare whether the note of James Erwin in the said account mentioned, was not paid to the said Thomas Gardner in his life time or to the said Ann Gardner as administratrix aforesaid, since his death, or to some person acting for or under her permission or authority, either in money, negro slaves, or other property and when and by whom is was paid, if in money, how much received, and if in property at what value was the same estimated and paid by the person paying the same and what was the estimated value at which it was received. Whether the said Allen & B. Herring's note in the said account mentioned has not been paid to the said Thomas Gardner in his life time or since his death to the said Ann Gardner or to some person acting for her or under her permission or authority, either in money or property, and when and by whom it was paid: and how much was received in payment, whether the note of James Mitchel in the said account mentioned, has not been paid to the said Thomas Gardner in his life time or since his death to the said Ann Gardner or some person acting for her or under her permission or authority either in money or property, and when, and by whom, it was paid, and how much was received in payment, whether the mortgage of John J. Gray in the said account mentioned has not been paid or satisfied, either to the said Thomas Gardner in his lifetime or to the said Ann Gardner since his death or to some person acting for her or under her authority or permission, and if paid or satisfied how much has been received thereon, and if not paid or satisfied, that the said Ann Gardner may in manner aforesaid set forth and declare what measures were adopted by the said Thomas Gardner in his lifetime to collect the same or by the said Ann Gardner since his death, and where the said mortgage now is and under whose controul the same is. Whether Henry Gardners' note in the said account mentioned has not been paid either to the said Thomas Gardner in his life time, or to the said Ann Gardner since his death, or to some person acting for her or under her permission or authority, and how much was received thereon and when and by whom, that the said Ann Gardner may in manner aforesaid set forth and declare whether the said Thomas Gardner in his life time did not,

or the said Ann Gardner since his death, receive from the said John McKinne an order on the Bank of Augusta for the payment of any surplus which might remain from certain mortgages or other securities together with that bank by the said John McKinne as a security for the payment of a debt due by him to the said bank, what is the nature and amount of the securities lodged by the said John McKinne with the said bank and in what situation they are, whether any thing has been received by the said Thomas Gardner in his life time or the said Ann Gardner since his death from the said order; and if not that she may state whether there is any expectation of receiving any thing and how much.

Whether besides the said order on the Bank of Augusta and the several notes and other securities mentioned in the said account hereto annexed, the said Thomas Gardner in his life time did not receive from the said John McKinne any other securities or evidences of debts or property or money to be applied to the payment of the balance due on the said judgment of the Bank of the United States founded in part as aforesaid on the said bills of exchange, and particularly whether he did not receive a promissory note of one Reeze on which there was due the sum of four thousand five hundred dollars or some other large sum, and how much, whether the said note or any other so received has been paid and when and how much has been paid. Where the note of the said Reese or any other security for money or evidences of debt received from the said John McKinne now is, how the same has been disposed of, whether it ever was passed away by the said Thomas Gardner or delivered by him to any other person, and who, and for what purpose, whether the plantation mortgaged by John Beck has been sold and what was the nett amount sales, and that the said Ann Gardner may in manner aforesaid, set forth and declare whether the whole of the mortgages, orders, notes and other securities for money or evidences of debts herein before mentioned, and any other received by the said Thomas Gardner in his life time or the said Ann Gardner, administratrix as aforesaid, since his death from the said John McKinne, were not received as securities for the payment of the aforesaid bills of exchange on the judgments recovered thereon by the Bank of the United States against the several parties drawers acceptors and indorsers thereto. And that the said Ann Gardner may be required to apply them accordingly, and that she may make a statement shewing how much has been received and what balance is now due and owing on the said judgment so assigned to her if any, and that she may be required to enter satisfaction on the said judgment and desist from any further proceedings thereon. And that your orators may have such further and other relief as may be agreeable to equity and justice and the nature of their case may seem to require. May it please your honors to grant to your orators a writ of *subpœna* to be directed to the said Ann Gardner, administratrix as aforesaid thereby commanding her at a certain day and under a certain penalty therein to be in-

serted, personally to be and appear before the sixth circuit court of the United States at a court to be holden at Milledgeville in and for the district of Georgia on the sixth day of May next, then and there to answer the premises and to stand to and abide such order and decree therein as to the said court shall seem agreeable to equity, and conscience.

DAVIES & BERRIEN,
Complts. Solrs.

Exhibit A.

Dr. Col. John McKinne, in acc. curt. with Ths. Gardner.

1819.		
Febr. 16.	To cash paid Mr. Jones in specie - -	$3,000 00
	discount to take up John A. Banes, draft	72 45
	cash p.R. W. Habersham, Esq. on your ac.	2,600 00
	do paid R. W. Habersham, Esq. -	2,765 00
	paid Flowrnory collecting Lamkins, note	57 50
	do John A. Heard, fee - - -	50 00
	cash paid R. W. Habersham on account of judgment obtained by branch bank United States - - - - -	18,544 20
	Commission on advancing the above 2½ p.c.	463 60
		$27,552 75

Cr.

Feb. 16,	By cash received from Mr. Jones in bank bills - - -	$3,000 00	
	By cash received from McKinne & Co. - - - -	88 87	
	By cash placed to my credit in Augusta bank - - -	2,600 00	
	By cash placed to my credit in Augusta bank - - -	2,765 00	
	By cash received from Hansel -	3,692 12	
			12,145 99
			$15,406 76

Balance due on judgment obtained by the Branch Bank United States:

By six negroes delivered to my agent at Augusta, the bill of sale that accompanied these negroes was a bill of sale of B. McKinne to Thomas Gardner, only five of the negroes mentioned in the bill of sale were delivered, although I received six negroes for which I agreed to allow John McKinne - - $2,100 00

By James Erwin's note balance due exclusive of interest, now under protest	$2,713 00	
B. Allen & B. Herring's joint note, balance exclusive of interest - - -	1,400 00	
Js. Mitchel's note balance exclusive interest	791 72	
A. Patterson's receipt for Jno. J. Gray's mortgage on two negroes balance due -	987 64	
Henry Gardner's note exclusive of interest	170 67	
		6,063 03
Two-thirds (2-3) interest in a mortgage on John Beck's plantation, supposed will sell for about $8,000 00 - -	55,33 33	
Deduct sheriff's fees and coms., suppose -	250 00	
		5,083 33
		$13,246 36

Answer. Bill filed 20th March, 1824.

GEORGE GLEN, *Clerk.*

SIXTH CIRCUIT COURT UNITED STATES,
District of Georgia.

THE PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES and others, Defendants,
ads.
CHARLES KELSEY and others, Complainants.
} In Equity.

Answer of Ann Gardner, administratrix of Thomas Gardner, deceased, one of the defendants to the original bill and amended bill of complainant of Charles Kelsey, Archibald McIntyre and Alfred M. Hobby, complainants:

This defendant now and at all times hereafter, saving and reserving to herself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections and insufficiencies in the said complainants said bill of complaint, contained for answer thereunto, or unto so much thereof and such parts thereof, as she, this defendant, is advised, is material for her, this defendant, to make answer unto. She, this defendant, answering, saith, that she believes it to be true that about the year eighteen hundred and nineteen, the said complainants, as stated in their said bill of complaint, by their name and firm of Charles Kelsey and Co., did draw three several inland bills of exchange on one John McKinne, of the city of Augusta, in favor of Thomas Gardner, late of Savannah, deceased, one for nine thousand five hundred dollars, dated on the twenty-fourth of September, in the year eighteen hundred and nineteen; one other for six thousand five hundred dollars, dated on the first day of October, in the same year, and one other for six thousand dollars, dated also on the said

first day of October, and amounting in the whole to twenty-two thousand dollars, and that the said bills of exchange were indorsed by the said Thomas Gardner and William Scarborough, in the manner stated in the said bill of the said complainants. This defendant also believes it to be true that the said several bills of exchange were accepted by John McKinne, but for whose accommodation the said bills of exchange were drawn by the said complainants this defendant does not know, nor does she know that all the parties to the said bills were informed that the said bills were accommodation bills or for whose accommodation they were drawn. This defendant also believes it to be true, that the said bills of exchange were not paid when they became due, and that they were protested for non-payment, and that suits were thereupon commenced by the said Bank of the United States in this honorable court against the said complainants as drawers of the said bills against the said John McKinne as acceptor, and against the said Thomas Gardner as indorser thereof, returnable to May term, in the year one thousand eight hundred and twenty, and on which several suits, judgments were recovered in December term of the same year, and executions of fieri facias issued upon each of the said judgments. That the said judgments was returned against the said complainants for the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents of principal, and two thousand four hundred and sixty-nine dollars and ninety cents of interest; and for the further sum of twenty-one dollars for the costs of protest, and twenty dollars and ninety-four cents for the costs of suit. And this defendant is confirmed and believes that in the said judgment so rendered against the said complainants, besides the amounts of the said three drafts and the interest thereon, were included sundry other sums of money due by the said complainants to the said Bank of the United States, as indorsers on sundry notes as stated in the said bill of the complainants, amounting in the whole to the sum of eleven thousand five hundred and eighty dollars and eighty-two cents, including the interest due on the said notes at the time of the rendition of the said judgment and the costs of protest, and for which last named sum of money, or *or* so much of the said judgment as is founded thereon, this defendant is informed, and believes, that the said complainants have obtained a release or discharge from the said Bank of the United States; that the judgment so obtained in favor of the Bank of the Uunited States against the said John McKinne the acceptor of the three drafts so drawn as aforesaid, by the said complainants was rendered for the sum of twenty-two thousand dollars of principal, and for eighteen hundred and thirty-three dollars and forty-two cents of interest, and nine dollars for the costs of protest on the said drafts and the cost of suit, mounting to dollars. And this defendant further saith, that the judgment so obtained in favor of the Bank of the United States against the said Thomas Gardner, in his life time, as

indorser of the said three drafts or inland bills of exchange so drawn by the said complainants, as stated in their said bill of complaint, was rendered by the said court for the sum of twenty-two thousand dollars of principal, and eighteen hundred and thirty-three dollars and forty-two cents for interest, and eighteen dollars 26 cents for the costs of suit, and for which amount a writ of fieri facias was issued against the property of the said Thomas Gardner in his lifetime. That the said Thomas Gardner, in part satisfaction, on the said judgments so obtained against the said John McKinne and himself as acceptor and indorser on the said three drafts, did pay over to Richard W. Habersham, the attorney of the said Bank of the United States, the sum of five thousand three hundred and sixty-five dollars, being the aggregate amount of the two items of two thousand six hundred and two thousand seven hundred and sixty-five dollars, specified in Exhibit "A," annexed to the amended bill of the said complainants; and that the said complainants and the said John McKinne being unable, as this defendant is informed, and believes, at that time, to satisfy the said judgment so rendered against them respectively in favor of the Bank of the United States or any part thereof, the said Thomas Gardner, in his life time, sometime in the month of April, in the year of our Lord one thousand eight hundred and twenty-one, was obliged and compelled to pay to the Bank of the United States aforesaid, the balance due on the said judgment so rendered against him as aforesaid, which balance so due and so paid by the said Thomas Gardner to the said Bank of the United States in full satisfaction of the said judgment so rendered against him, amounted to eighteen thousand four hundred and four dollars and seventeen cents, and for which the said Bank of the United States gave to the said Thomas Gardner a receipt, a copy of which is hereto annexed, marked Exhibit "A," and which defendant prays may be taken as a part of this, her answer. That at the time the said payment was so made by the said Thomas Gardner, it was agreed and understood by and between the said Thomas and the said Bank of the United States, or by its agent in Savannah, as this defendant is informed and believes, that the said bank would, whenever required so to do by the said Thomas Gardner, assign and transfer to the said Thomas Gardner the said judgments so rendered against the said complainants, and the said John McKinne, to enable him, the said Thomas, to recover or collect from the said complainants, the said John McKinne, or either of them, the sum so paid by him as indorser on the three said bills of exchange or drafts.

That afterwards and before the making and executing the said assignment the said Thomas Gardner departed this life intestate, and that this defendant applied for and obtained letters of administration in due form of law on the estate and effects of the said Thomas Gardner and took upon herself the administration thereof. That the said complainants did not in the life time of the said Thomas Gardner pay to the said Bank of the United States or any agent or attorney of the said bank, or to the said Thomas Gardner or as this defendant is informed and believes, to any other person

whatever, any part of the said sums of money for which the said three inland bills or drafts were drawn or any part of the judgment so obtained against them as aforesaid, nor did they repay or refund to the said Thomas Gardner the amount of the sum of money so paid by him to the said Bank of the United States in satisfaction of the judgment against him as aforesaid, nor since the death of the said Thomas Gardner have the complainants paid the said sum or sums of money or any part thereof to this defendant or to any person or persons authorized by her to receive the same. That after the death of the said Thomas Gardner, this defendant, as the duly qualified administratrix of the said Thomas Gardner, did apply to and demand from the president, directors and company of the Bank of the United States for an assignment or transfer of the judgment of the said bank against the said complainants above referred and stated as in equity and justice she was entitled to do, and thereupon an assignment of the said judgment was made and executed to this defendant for the benefit of the estate of the said Thomas Gardner by the said president, directors and company of the Bank of the United States, a true copy of which deed of assignment or transfer is annexed to the answer of the president, directors and company of the Bank of the United States to the original bill of the complainants marked Exhibit "A," and which this defendant prays may be taken and considered as a part of this her answer. This defendant admits that the said Thomas Gardner did in his life time receive from the said John McKinne various sums of money and securities for the payment of other sums of money, which sums of money, and the amount of the said securities, when collected, were to be applied to the credit of the said bills of exchange or the judgments obtained on them, and which sums of money and securities are stated in Exhibit "A" annexed to the amended bill of the complainants. And this defendant also admits that the said account marked Exhibit "A," annexed to the said amended bill of the said complainants is correctly taken or copied from the books of the said Thomas Gardner, but this defendant avers that the notes and other securities specified in the said account were assigned and transferred to the said Thomas Gardner only as a collateral security to him for his indorsements, and not in absolute payment, and that the several sums of money received and collected therefrom by the said Thomas Gardner in his life time, and this defendant, since his death, although due diligence was always used by the said Thomas in his life time, and by this defendant since his death, to collect the same, were by no means equal to the amount which the said Thomas Gardner had been obliged to pay for and on account of his said indorsements and the judgment thereupon rendered against him as aforesaid, but that a large balance still remains due and unpaid to this defendant as administratrix as aforesaid. That James Erwin's note specified in the said account marked Exhibit "A," amounting to two thousand seven hundred and thirteen dollars

was delivered up to his father, Mr. Andrew Erwin, upon his agreeing to sell and deliver up to this defendant five negro slaves on the first day of January next, eighteen hundred and twenty-five, and which negroes, if they are all duly delivered at the said period, are not and will not be worth, as is believed, even estimating them at the highest valuation, more than two thousand five hundred dollars, this defendant therefore believes, as she is instructed, that the said complainants are not and cannot be entitled to a credit of two thousand seven hundred and thirteen dollars, claimed in Exhibit "A" annexed to the said amended bill, as the balance due on James Ervin's note or any part thereof and to the said sum of three thousand dollars, or any part thereof claimed by them in the said amended bill on that account. This defendant admits that the note of Allen and B. Herring in the complainants amended bill specified was paid to the said Thomas Gardner in his life time, and that the said Thomas Gardner did receive in full satisfaction of the said note, the sum of fourteen hundred dollars or thereabouts. This defendant admits that the said Thomas Gardner in his life time did receive on the note of James Mitchell the sum of eight hundred dollars, and that this defendant since the death of the said Thomas has received the sum of one hundred and ninety-two and a half dollars or thereabouts on account of the said note. For further answer this defendant says that the mortgage of John J. Gray, as this defendant is informed and believes, is still in the possession of —— Patterson for recovery, and that every effort has been made for the recovery thereof by having the same promptly placed in the hands of a competent attorney at law for that purpose, but that the said John J. Gray has as this defendant is informed pleaded or set up a claim to very large setts off, and nothing is expected to be recovered from the said mortgage. That the said Thomas Gardner did not receive, nor hath this defendant or any person for her or his account ever received any sum or sums of money for or on account of the said debt or mortgage. This defendant admits that Thomas Gardner received in his life time, the sum of one hundred and eighty dollars ninety cents in full of Henry Gardner's note. This defendant further answering saith that the said Thomas Gardner did not in his life time, as this defendant is informed and believes, receive from the said John McKinne any order on the Bank of Augusta for the payment of any surplus which might remain from certain mortgages or other securities lodged with that bank by the said John McKinne as the security for the payment of a debt due by him, the said John McKinne to the said bank; that after the death of the said Thomas Gardner, the said John McKinne gave to this defendant an order on the said Bank of Augusta in the following words:

"Augustus Moore, Esq.,

Sir: When my accounts are sufficiently settled with the Bank of Augusta to authorize the delivery of other person's notes paid

by me, you will please deliver to the legal agents of the late Thomas Gardner, Esq. the notes of Gilbert Longstreet with the mortgage of his swamp land, and this shall be your authority in full for so doing.

Your obedient servant,
(Signed.) JOHN McKINNE."

Which is the only order ever given by the said McKinne on the said Bank of Augusta to this defendant for and on account of the said matters specified in the complainants said amended bill, and further this defendant saith that she is advised and believes that the said John McKinne has never settled his accounts with the said Bank of Augusta, and that the accounts of the said John McKinne have never been sufficiently settled with the said bank as to authorize the said Augustus Moore to comply with the requisition of the said order or any part thereof. And this defendant saith that she never has nor has any person for and on her account or behalf or for or on account or behalf of the estate of the said Thomas Gardner ever received from the said Augustus Moore or the said Bank of Augusta, the said notes of the said Gilbert Longstreet or the mortgage specified in the said order or any other security or securities or money or effects by virtue of and on account of the said order, and that she does not expect or know that any thing will ever be received by her or any other person in behalf of her or the said estate for and on account or by virtue of the said order. This defendant admits that a note of F. B. & J. Reese for a considerable sum of money, but for how much this defendant knows not, was received from the said John McKinne by the said Thomas Gardner, as a further collateral security for the repayment of the amount so advanced by the said Thomas for and on account of the said three drafts or bills of exchange, and that the sums received by the said Thomas Gardner in his life time and by this defendant since his death for and on acconnt of the said note, amount together to the sum of three thousand six hundred and ninety-two dollars 12 cents and no more. That the said note was delivered to the said complainants themselves to be put in suit, and that if there has been any negligence or laches in the recovery of the balance due thereon, the same is imputable to the said complainants or to some person or persons acting for them or employed with their assent.

The defendant admits that the plantation mortgaged by John Beck has been sold for the sum of seven thousand three hundred dollars, two thirds of which sum say four thousand eight hundred and sixty-six dollars and sixty-six cents or two thirds, is to be applied to the credit of the said John McKinnie in part of the balance due to the estate of the said Thomas Gardner on the said three bills of exchange in the complainants bill specified, and the said defendant denies that the said Thomas Gardner in his lifetime did, or this defendant since his death has received any other mortgage

or mortgages, order or orders, notes moneys or securities for money or evidences of debt from the said John McKinnie for the repayment of the moneys advanced by the said Thomas Gardner in his lifetime for or in payment of the said three drafts or inland bills of exchange or the judgment so rendered thereon as aforesaid, than those herein before specified not accounted for except about three hundred dollars received from John McKinnie in three horses, and this defendant further answering saith that the account hereto annexed marked Exhibit A, and which this defendant prays may be taken as a part of this her answer is a just and true account of all the monies or sums of money received by the said Thomas Gardner, in his lifetime, and by this defendant since his death, from the said John McKinnie or from any other person or persons or from any debts, mortgages, orders, notes, securities of money or other evidences of debt assigned or transferred by the said John McKinnie, or by any other person or persons, and the said Thomas Gardner, in his lifetime, or to this defendant as his administratrix or otherwise since his death for and on account of the monies so advanced and paid by the said Thomas Gardner in his lifetime, to the President Directors and Company of the Bank of the United States, or to any person or persons on account of the said bank, for and on account of the said three drafts or bills of exchange of the complainants in the complainants said amended bill specified, and that the true and just balance now due by the said complainants to this defendant, as administratrix of the estate of the said Thomas Gardner on the said judgment of the President, Directors and Company of the Bank of the United States, against the said complainants so assigned as aforesaid by the said bank to this defendant, is five thousand nine hundred and sixty-six dollars 18 cents, exclusive of interest as per account annexed. And this defendant denies all and all manner of unlawful combination and confederacies in the complainants bill, charged against her, without that, that any other matter or thing in the complainants bill of complaint contained, material or effectual for this defendant to make answer unto, and not herein or hereby sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant, all which matters and things this defendant is ready to aver, maintain and prove as this honourable court shall award, and humbly prays that the iujunction which has been granted in this case be dissolved, and she be hence dismissed with her reasonable costs and charges, in this behalf most wrongfully sustained.

ANN GARDNER,
Administratrix of the estate of Thos. Gardner.

Personally appeared before me Ann Gardner the defendant in the above case, who being duly sworn, deposeth and saith that the facts set forth in the foregoing answer so far as the same relate to her own acts and deeds are true, and so far as relates to the acts and

deeds of others, she believes them to be true. Augusta, this third day of May, 1824.

RALPH KETCHUM, *J. J. C. R. C.*
HARRIS & HABERSHAM, *Def't Solic'rs.*

CHARLES KELSEY and others Complainants,
and
The BANK OF THE UNITED STATES and others, Defendants.
} In Equity.

The Replication of Charles Kelsey, Charles McIntyre and Alfred M. Hobby to the answer of Ann Gardner one of the defendants.

These replicants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say that they will aver and prove their said bill to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied to by these repliants, without that, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided traversed or denied is true, all which matters and things, these repliants are and will be ready to aver and prove as this honourable court will direct, and humbly prays as in and by their said bill and amended bill they have already prayed.

DAVIES & BERRIEN, *Compl't Sol'rs.*

Replication to the answer of Ann Gardner, filed July 29, 1824,
G. GLEN, *Cl'k.*

CHS. KELSEY & CHS. MCINTYRE and ALFRED M. HOBBY Complainants,
and
The PRESIDENT DIRECTORS AND COMPANY OF THE BANK OF THE UNITED STATES and others, Defendants.
} In Equity, 6th Circuit Court of the United States District of Georgia.

Interrogatories to be propounded to Andrew Erwin junior, a witness residing at Bedford County, State of Tennessee, a witness to be produced sworn and examined on the part of the complainants.

1st. Do yon know the parties complainants, and Ann Gardner one of the defendants, or any and which of them?

2d. Do you not know that John McKinnie of Augusta in the State of Georgia, held at same time and when the promissory note of James Erwin for five thousand dollars or some other, and what sum, and of what date? If yea state, if you can, whether the said note was not passed or transferred by the said John McKinnie to Thomas Gardner late of Savannah deceased, in payment of or as collateral security for the payment of their certain bills of exchange

drawn by Charles Kelsey & Company, in favor of the said Thomas Gardner on the said John McKinnie, one for nine thousand five hundred dollars, dated the 24th September, 1819, one for six thousand five hundred dollars dated the first of October 1819, and another for six thousand dollars dated also on the first of October, 1819, and which were accepted by the said John McKinnie but protested for non-payment.

3d. If the note of the said James Erwin was passed or transferred by the said John McKinnie to the said Thomas Gardner, has the same bill been paid? If yea, say to whom it was paid, and what sum was paid after the transfer aforesaid and and when where the same was paid, and how and in what manner.

4th. Is there any other matter or thing within your knoweldge and important to be related on the part of the complainants? If yea, relate the same fully.

DAVIES & BERRIEN, *Compl'ts Sol'trs.*

STATE OF GEORGIA, *Circuit Court.*

ANN GARDNER, Administratrix of THOMAS GARDNER, et al. *ads.* CHARLES KELSEY & Co. } In Equity.

Ann Gardner by her attornies hereby objects and protests against the commission and interrogatories hereto filed for the examination of witnssses, her answer to the bill of injunction being the only subject matter before the court, until otherwise ordered by said court.

Savannah 9th August, 1824.

HARRIS & HABERSHAM, *Sol'trs for Def't.*

Cross Interrogatories (under protest) of Ann Gardner defendant in the said cause to the direct interrogatories of the said complainants.

1st. Be particular and state whether you know on what terms or account the note referred to in the interrogatories was transferred, and state said terms and how you came to the knowledge of them, and whether you know of your own knowledge that it was transferred at all by John McKinnie to Thomas Gardner deceased.

2d. Has the note been paid? if so by whom has it been paid? Was it paid in money or in property? if in property to what amount, and how much was said property really worth? Was James Erwin, the maker of the note, fully solvent at the time the said note was paid if the same was paid? Do you or do you not believe that at the time the note was taken up and paid (if paid or taken up) what the amount of property given for the same, tho' the same might have been worth less than the nominal value was, still the maker of the note was willing or able to give for the same, and do you not know and believe that it was for the interest of the

holder of the note to take the property and the amount given for the same: would you not have advised such settlement?

3d. Whatever payment or compromise took place in relation to the note aforesaid, was not the same made with the privity, knowledge, advice, approbation, or consent of Col. John McKinne or his agent or attorney? State all you know on this subject.

HARRIS & HABERSHAM,
Sol's for Def'ts.

Filed 9th August 1824.

GEO. GLEN, *Clerk.*

STATE OF TENNESSEE, *Bedford County.*

In pursuance of the enclosed commission to us directed, we have this day at the house of John Scott, in the county aforesaid, proceeded to take the deposition of Andrew Erwin, jr., (to be read in evidence in a case wherein Charles Kelsey, Charles McIntyre and Alfred M. Hobby, are complainants, and the President, Directors, and Company of the Bank of the United States and others are defendants) who being duly sworn according to law answereth and saith to the interrogatories put by the plaintiffs in the manner following, viz:

To interrogatory 1st. I do know the parties complainants, and Ann Gardner, one of the defendants.

To interrogatory 2d. I do know that John McKinne of Augusta, held a note on my brother James Erwin, for five thousand dollars. I do not know precisely the time at which the note was given or when it was due, but believe it was given in 1819 or '20, and payable in 1821. I was informed by my brother James Erwin, that he paid about $2,200 of said note in Georgia, but whether to John McKinne or Thomas Gardner, I do not certainly know. The balance of said note for about $3,000 including interest, was settled for and the note lifted from the agent of Mrs. Ann Gardner, viz. Stephen Minton. I cannot of my own knowledge say on what account or for what particular consideration the said note of five thousand dollars, or the balance of it was transferred to Thomas Gardner or his heirs or representatives.

To interrogatory 3d. I have stated in the preceding answer, that my brother James Erwin informed me that he had paid $2,200 or thereabouts, in Georgia, on the note for five thousand dollars, but whether to John McKinne or Thomas Gardner I do not know. The balance of the note was settled for and the note lifted from Stephen Minton who acted as the agent of Mrs. Ann Gardner. He was authorized to receive a conditional bill of sale or mortgage of five negroes in the name of Henry Gardner (for the use of Ann Gardner.) The mortgage or bill of sale was executed in this county by Andrew Erwin, on the 11th day of February, 1823. The conditions were

that the negroes should remain in the use and possession of the said Andrew Erwin until the first day of January 1825, and the mortgage or bill of sale to be levied on condition that on or before the said first day of January 1825, the said Andrew Erwin would pay the said Henry Gardner the sum of three thousand dollars, otherwise to be and remain in full force and effect.

To interrogatory 4th. I know of nothing more important to be related on the part of the complainants.

In answer to the cross interrogatories of Ann Gardner, one of the defendants in said suit, the said Andrew Erwin jr. answereth and saith in manner following, viz:

To the interrogatory 1st. I cannot of my own knowledge say on what particular account the note or balance of the note on James Erwin was transferred to Thomas Gardner. I know that the balance of $3,000 or thereabouts due on the said note was paid and settled for with the agent of Mrs. Ann Gardner, and was informed by John McKinne that it belonged to her as the representative of Thomas Gardner deceased.

To interrogatory 2d. The note has been paid and taken up. I was informed by my brother that he made one payment of $2,200 or thereabouts in Bridge bills, but whether to Mr. McKinne or Gardner, I do not positively know. The balance was paid as stated in my answer to the third direct interrogatory, by a mortgage or conditional bill of sale of five negro men between the ages of 17 and 30. I do not consider the property mortgaged but I believe the maker of the note was not able to give more, and that the holders of the note acted prudently in taking what was offered. The negroes would not in my opinion be sold here now for more than $450 each. I did advise such settlement and believed that the holders of the note consulted their best interest in the matter in pursuing the course they did.

To interrogatory 3d. The settlement was made with the privity, knowledge, advice, approbation and consent of Col. John McKinne, and further this deponent saith not.

Signed, ANDREW ERWIN, jun.

Sworn and subscribed to before us this 23d September, 1834, at the place abovenamed.

MATT. MARTIN, *J. P.*
JNO. SCOTT. *J. P.*

At a regular circuit court of the United States for the district of Georgia, held at the court house in Milledgeville on the twelfth day of May, A. D. 1825, being a day of the term of the said court begun and held on the sixth day of May in the year aforesaid, before the honorable William Johnson and the honorable Jeremiah Cuyler.

CHARLES KELSEY and others
vs.
THE BANK OF THE UNITED STATES. } In Equity.

It is ordered that the case be referred to the register to take depositions:

1st. On the nature of the transaction in drawing the bills of exchange on which the judgment against Kelsey originated, whether it was an accommodation to John McKinne, and to whose use the proceeds were applied.

2d. On the transaction respecting the conditional bill of sale of A. Erwin's negroes, and whether they have come to Mrs. Gardner's hands or how disposed of.

3d. As to the proceeds of Beck's land, whether the sum credited by the statement of amounts between Gardner & McKinne as the proceeds of the Elbert lands be the same with that acknowledged by Mrs. G., to have been received from the sale of Beck's land, and it is further ordered that in the mean time the injunction continue.

CIRCUIT COURT, *Georgia District.*

CHARLES KELSEY and others
vs.
BANK OF THE UNITED STATES. } May Term, 1825.

Wm Y. Hansell examined, says that in June 1819 there was a mortgage and notes amounting to $60,000 made by John Beck of Elbert county, placed in his hands by John McKinne of Augusta, for the purpose of collecting or obtaining further security from Beck. That he went to Elbert county, to Becks', but was unable to obtain further security of the debt or any payment thereon. The mortgage was on two tracts of land in Elbert county, one on the Savannah river, and the other near Elberton. The mortgage was made to John McKinne, or McKinne & Co.; does not recollect which! In July he returned the mortgage and notes to McKinne, since which time he has not seen them. Beck resided on the tract of land near Elberton: does not know what was then the value of the lands.

Signed, WM. Y. HANSELL.

Sworn to in open court, 12 May 1825.

GEO. GLEN, *Clerk.*

Wm. Y. Hansell sworn saith that the note V. & J. Rees which the witness believes to be the same alluded to in the defendants

answer, for $8,011 16 was placed in his hands by John McKinne and receipted for by him to Edmund Martin; that witness sued the note in the name of Edmund Martin and obtained a judgment. On the 9th December 1820 there was paid to Mr. E. Martin the plaintiff, in part of said judgment $5,104 42. That Col. McKinne afterwards instructed the witness that the balance of the judgment must be held for Mr. Thomas Gardner; that witness afterwards paid over that balance to Mr. T. Gardner, amounting to $3,696 12 for which he holds Mr. Gardner's acknowledgment, dated Jun. 28, 1821, and that this balance, after deducting his commissions on the whole amount of the judgment, satisfied the judgment.

WM. Y. HANSELL.

Sworn and examined in open court.

GEORGE GLEN, *Clerk.*

Cross Examined. Says there was a mortage placed in his hands by John McKinne on property of Edward Varney, of Putnam county, which mortgage was foreclosed, and the property sold for $6,000, which amount was received by witness, after deducting costs, and a part thereof paid over to the draft of Augustus Moore, cashier of the Bank of Augusta, to whom the receipt of witness for the mortgage had been transferred by McKinne. The amount paid to Mr. Moore's draft he does not recollect, not having the draft before him; it was over $3,500, and not exceeding $4,300. The balance, after deducting fees, he paid over to Barna McKinne, agent for John McKinne. At the time he paid Mr. Moore's draft he was informed it was in full of the balance due by John McKinne to the Bank of Augusta. He received this information from having laid before him a copy of the account current of John McKinne with the Bank of Augusta, in Mr. Moore's handwriting. He has subsequently been informed by John McKinne that he still owes the Bank of Augusta $630, which was the amount of an error in his account with that bank. Witness received the money in March, 1824, and paid it over some time the same spring.

WM. Y. HANSEL.

Sworn to in open court, 12th May, 1825.

GEO. GLEN, *Clerk.*

Filed 12th May, 1825.

GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia, ss.*

I, George Glen, clerk of the circuit court of the United States for the district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned,

taken from and by me, carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand and affixed [L. S.] the seal of the said circuit court, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-eight.

UNITED STATES OF AMERICA, *District of Georgia, ss.*

I, Jeremiah Cuyler, judge of the district court of the United States for the district of Georgia, do hereby certify that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations given as such; and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereunto set my hand, this twenty-fourth day of November, in the year of our Lord 1838.

Signed J. CUYLER.

No. 24.

Testimony of J. M. Berrien, taken by commission.

THE UNITED STATES OF AMERICA,
South Carolina District, Sixth Circuit.

A. M. HOBBY and THOS. P. BOND, of Georgia,
vs.
CHS. KELSEY and CHS. MCINTIRE,

Interrogatories in chief to be administered to John McP. Berrien, Esq., a witness residing in Georgia, to be produced, sworn, and examined on the part and behalf of the defendants.

1st. Were you or not in 1822, and at what time in that year, or when, engaged as counsel for Charles Kelsey and Charles McIntire, or which of them, to procure for them relief from a judgment obtained against them by the Bank of the United States?

2. If you answer affirmatively to the first interrogatory, then say what was the state of the proceedings on that judgment, when you were consulted about it? Had or not an execution been issued on it and levied on the goods of C. Kelsey and Company, and when had it been so levied?

3. What steps did you pursue to arrest the operation of this levy? Were or not Charles Kelsey & Co. obliged to give security for the amount of that judgment, in order to suspend its levy on them? What was the amount of the judgment? What would be a fair commission or compensation to their security? Would it or not be commission or per centage on the amount of the judgment, and what per centage?

4. Was or not the suspension of the levy aforesaid obtained with difficulty and trouble, and what difficulty or trouble? Were you or not required to go several times from Savannah to Milledgeville, and how often in the case? What compensation did Charles Kelsey & Co. or either of them give you for your services in the case?

5. From the knowledge which you possessed of the situation and credit of Charles Kelsey & Co. at the time that the aforesaid levy was made on them, what damage should you think they sustained by the said levy, and what would you think a reasonable compensation for this damage?

6. Do you know any other matter, cause or thing that may be of benefit to the defendants?

KING & WALKER,
Defts. Solicitors.

Commissioners for defendants:

WM. W. GORDON, and
JOSEPH WASHBURN.

THE UNITED STATES OF AMERICA,
South Carolina District, Sixth Circuit.

A. M. HOBBY and THOS. P. BOND, of Georgia,
vs.
CHS. KELSEY and CHS. MCINTIRE.

Cross interrogatories to be administered to John McP. Berrien, Esq., a witness resident in Georgia, to be produced, sworn, and examined on the part and behalf of the defendants.

Plaintiffs object to evidence of legal proceedings without producing the record, or a copy of it.

1. If any such things ever took place as the defendants in their third interrogatory surmise, say whether there is any record of the proceedings relative to the arresting of the operation of such judgment?

2. Is it not a fact that Kelsey & Co. were indebted in the amount of that judgment, and that the levy was legal; and that Kelsey & Co. would have been obliged to pay the debt if the principals had not settled it?

3. Do you or not know that John McKinne settled the judgment in question, and that Kelsey & Co. were thereby released from the payment of it?

4. Did Kelsey & Co. ever obtain an injunction against the judgment of the United States, or did they replevy their goods under any State law?

5. Is there any foundation that you know, for what is surmised in the 3d interrogatory, that a surety has a right to a commission on the bond, that he signs as surety? Is any such right claimed or acknowledged, in the common transactions of men, or in the administration of justice?

6. If Kelsey & Co. sustained any loss by the execution of the United States Bank vs. Kelsey & Co., as is surmised in the interrogatories, was not such loss *damnum absque injuria*?

7. Do you know any thing of the dissolution of the firm of C. Kelsey & Co., and of the undertaking of Kelsey and McIntire to pay A. M. Hobby, the retiring partner, a certain sum of money, and of their never paying any thing? And do you know any other matter or thing tending to show that Kelsey and McIntire ought to pay that money to Hobby, which they stipulated to pay out of the assets after the payment of the debts?

PETIGRU & LESESUE,
Compl'ts Sols.

The depositions of John MacPherson Berrien, a witness sworn and examined under and by virtue of a commission issuing out of the sixth circuit court of the United States for the district of South Carolina, in a cause there depending, wherein A. M. Hobby and Thomas P. Bond are plaintiffs, and Charles McIntire and Charles Kelsey are defendants, taken before William W. Gordon and Joseph Washburn, commissioners therein named, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

Answers of the Witness to the Direct Interrogatories.

To the first interrogatory, the witness answering saith: In connection with the late William Davis, Esq., with whom I was then associated in the practice of the law, I was employed in the early part of the year 1823, by Messrs. Charles Kelsey & Co., that being the name of a mercantile firm composed of Charles Kelsey, Charles McIntire, and Alfred M. Hobby, to obtain relief for them against a judgment obtained by the Bank of the United States against that firm while it was in existence.

To the second interrogatory, the witness answering saith: I have refreshed my memory in this matter by referring to the record and proceedings in the office of the clerk of the sixth circuit court of the United States for the district of Georgia, and am thus enabled to state, that when Davis & Berrien were consulted by Charles Kelsey & Co. there was a subsisting judgment at the suit of the Bank of the United States against that firm, on which the plaintiffs in that judgment alleged that there was a balance due of between five and six thousand dollars, for which they had issued an execution, and caused the same to be levied on the goods of Charles Kelsey & Co., as I verily believe. I am unable to state the particular day of the levy.

To the third interrogatory, the witness answering saith: A bill praying for an injunction was filed by Davis & Berrien against the President, Directors and Company of the Bank of the United States, and the same was granted. On the coming in of the answer,

it appeared that the bank had assigned the said judgment to Ann Gardner, administratrix of one Thomas Gardner, who had paid the amount of the same, and the bank having disclaimed any interest in the said judgment, it became necessary to amend the bill, by making the said Ann Gardner a party, which was done, and an order obtained for the continuance of the injunction. Charles Kelsey and Charles McIntire, with Henry W. Hills and Jacob Wilcox as their sureties, gave a bond in the sum of five thousand five hundred and ninety dollars, in conformity to the order granting the injunction, which sum was the balance alleged by Ann Gardner to be due on the judgment. I am unable to answer the remaining part of the third interrogatory.

To the fourth interrogatory he answers: The application for the injunction was strenuously resisted by Mrs. Gardner, by her counsel, and corresponding exertions were of course made on the part of Charles Kelsey & Co. and their counsel. I am unable to say how often I attended the court at Milledgeville in this case, but as the court sat there once in each year, and this cause was pending I believe for several years, I feel confident that either Mr. Davis or my self must have gone there several times. I can speak of the compensation received from Charles Kelsey & Co. in this case, only after referring to the day book of Davis & Berrien, and having done so I believe the amount of that compensation to have been three hundred dollars.

To the fifth interrogatory, the witness answering says: I am unable to express upon the matters inquired of in this interrogatory, any opinion which would be satisfactory to my own mind.

To the last interrogatory, the witness answering saith: I am not aware that I know of any thing further which may benefit the defendants, Charles Kelsey and Charles McIntire.

J. McPHERSON BERRIEN.

Sworn to and subscribed before us, this 26th July, 1838.

W. W. GORDON, } *Commissioners.*
J. WASHBURN, }

Answers of John Macpherson Berrien to the Cross Interrogatories in the before mentioned case.

To the first interrogatory, the witness answering saith: There is in the office of the clerk of the 6th circuit court of the United States for the district of Georgia, a record of the proceedings on the bill filed in behalf of Charles Kelsey & Co. against the Bank of the United States, afterwards amended by making Ann Gardner, administratrix of Thomas Gardner, a party defendant, which bill was filed for the purpose of obtaining an injunction to stay proceedings, under the judgment of the Bank of the United States against Charles Kelsey & Co., subsequently assigned to the said Ann Gardner, administratrix as aforesaid.

To the second interrogatory, the witness answering saith: I am unable to answer this interrogatory.

To the third interrogatory, the witness answering saith: My recollection does not enable me now to state, if indeed I ever knew, how the judgment referred to in this interrogatory was settled.

To the fourth interrogatory, the witness answering saith: An injunction was obtained in behalf of Charles Kelsey & Co., as stated in my answer to the third direct interrogatory, to which answer I refer.

To the fifth interrogatory, the witness answering, saith: I suppose the right to commission, under the circumstances, must depend upon the agreement of the parties. I am not aware of any acknowledged right independent of this.

To the sixth interrogatory, the witness answering, saith: I am called upon by this interrogatory to express an opinion upon a question of law and fact; and the facts, upon which the legal question must depend, are not retained in my recollection with sufficient accuracy to enable me to do so.

To the seventh interrogatory, the witness answering, saith: I know nothing of the matters inquired of in this interrogatory. The dissolution of the firm of Charles Kelsey & Co., and the terms upon which it was to be dissolved, may have been mentioned to me, but I have no distinct recollection of the facts.

J. MACPHERSON BERRIEN.

Sworn to and subscribed before us, this 26th July, 1838.

W. W. GORDON, } *Commissioners.*
J. WASHBURN. }

To Charles Kelsey, Esq., Charleston.

Savannah, *24th July*, 1838.

Dear Sir: I have not until within a few days been able to get the day-book of Davis & Berrien, which passed out of my hands many years ago; but I have at length obtained it, and have also looked into the record of the proceedings under the bill filed to obtain an injunction. The subject had in a great degree passed out of my recollection, but as far as I could awaken it, I have answered the interrogatories sent to me by your counsel.

The day-book of Davis & Berrien contains the following entries:

1821.

April 25. C. Kelsey & Co. Dr.

To Office,

For services in suit at the instance of State Bank.

" " Cash Dr. to C. Kelsey & Co. - - - - $100.

1822.		
January 26.	Cash Dr. to C. Kelsey & Co.	
" "	Received of them on account of fee in the case of B. J. Georgia - - - - -	$500.
" "	This amount charged in rent of office -	200.
April 13.	Cash Dr. to C. Kelsey & Co.	
" "	Received from them, balance of fee in the case of B. J. Georgia - - - - -	$200.
1823.		
April 30,	Cash Dr. to C. Kelsey & Co.	
" "	Received of them on account, their bill in equity against Bank United States - - -	$100.
July 23.	Cash Dr. to Office.	
" "	Received from C. Kelsey - - - -	$200.

I hope these extracts may answer your purpose. And am, dear sir, respectfully yours,

J. MACPHERSON BERRIEN.

No. 25.

Order referring Report back to Clerk.

HOBBY & BOND
vs.
KELSEY & MCINTIRE.

JANUARY 9th, 1839.

This case having been heard at the last term of the circuit court in Columbia, upon bill; the answers of the defendants, exhibits and general replication; and a report from the clerk of the court under the order of this court, upon the accounts between the complainants and the defendants, and upon exceptions filed to the report by the respective counsel of the parties: It is ordered that the report of the clerk be set aside for insufficiency and uncertainty in the result as reported, and in consequence of evidence in the case subsequently filed as to certain material facts, for the want of which the said clerk was uninformed and misdirected.

And it is further ordered that a rehearing be given in this case, to take place at the ensuing term of the circuit court, with liberty to both parties to use the testimony now in the cause, and to adduce such further testimony as either may have in support of their respective rights. And it is further ordered that the accounts between the parties be referred to the clerk, with directions to report upon the same on or before the first day of April next; and the said

clerk is further directed, in making up said report, to reject all evidence upon any claim which the defendants may make for commissions for the settlement of the said concern of Charles Kelsey & Co., all claim for office rent, travelling expenses, clerk hire, and any evidence upon any claim for damages which the defendants may claim for the alleged non-performance by the complainants in not protecting them from a judgment of the branch of the United States Bank, &c. as set forth in the agreement between the parties; the same being left open to be considered by the court upon the rehearing of the cause upon such evidence as the parties may adduce for and against such claim. And it is further ordered that in taking evidence upon the allowance of exchange, he take into consideration what the defendants may have received, as well as what they may have paid.

It is further ordered that the clerk report upon the facts relating to the Bridge bills, in controversy between the parties.

JAMES M. WAYNE.

No. 26.

Testimony of Isaac Minis taken by Commission.

THE UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

ALFRED M. HOBBY & T. P. BOND
vs.
CHARLES KELSEY & CHARLES MCINTIRE. } In Equity.

Interrogatories for Isaac Minis of Savannah, a witness to be examined on the part of the complainants.

1. Do you know the parties to this suit?

2. Look at the paper herewith shewn to you, purporting to be a copy of an assignment of John Tanner to William Scarborough and others, and say whether you recollect the circumstances of Tanner's failure and assignment.

3. Were you one of the creditors interested in that assignment? Did you attend the meeting of the creditors? And do you recollect what there passed?

4. Did Charles Kelsey undertake to act for the other creditors, in the collection and distribution of Tanner's assets?

5. Were you compelled to pay any thing on any of John Tanner's notes on which you were indorser, as mentioned in the assignment? Can you say how much you did pay, or how much the said John Tanner is indebted to you?

6. Did Charles Kelsey ever refund any thing for your payments as Tanner's indorser? or did he ever account to you for the effects of Tanner that came to his hands?

7. Look at the schedule of Tanner's effects annexed to his assignments, and say whether you have any knowledge of the

debtors therein mentioned, and whether they were persons of substance and ability to pay?

8. Did you ever apply to Charles Kelsey for payment of your demand against Tanner, and what was his answer?

9. Do you know any thing else which tends to shew that Charles Kelsey and Charles McIntire ought not to charge Alfred M. Hobby, as one of the firm of C. Kelsey & Company, with the loss of money paid by them for John Tanner, or that Charles Kelsey and Charles McIntire did not in fact lose any thing by the said John Tanner? Declare fully.

PETIGRU & LESESUE,
Complainants' Solicitors.

HOBBY & BOND
vs.
CHARLES MCINTIRE. } In Federal Court.

Cross Interrogatories for Mr. Isaac Minis.

1. Was it or not at the request of John Tanner and all or a majority of his creditors, named in the deed of assignment of 7th February, 1830, undertook to act under that assignment?

2. Did you or not pay any thing, and if you did pay any thing, how much, and to whom, and when did you pay it, after the date of the assignment, on account of your liabilities, or any of them, for the said John Tanner, mentioned in the said assignment? If you made any such assignment, please to exhibit a statement and account of the same particularly, and exhibit your receipts and vouchers.

3. Were you or not yourself indebted, either individually or as a partner with some other person or persons, to some of the institutions or banks or persons who held the paper of Tanner, and to which or to whom were you so indebted? How and in what manner did you settle your own debt or debts with them, or either or any of them? Did you or not make your settlement of your own debt a condition with them, or some of them; and if yea, with which of them, that you should be released from your liability for Tanner?

4. If you ever applied to Charles Kelsey to be paid any thing from the assigned estate of Tanner, then state fully what was said on such application; did he or not tell you to make out your claim, if you had any, on Tanner's estate, and that it should be duly considered and equitably adjusted.

5. Did you ever present any account or statement to Charles Kelsey, or to Charles Kelsey & Company, showing that you had a legal claim to any portion of the money collected from the assets of Tanner's estate?

6. Were you or not particularly well acquainted with the affairs of Charles Kelsey & Company? If yea, how did you acquire your

information? Did you ever examine their books? Were they in the habit of communicating confidentially with you?

7. Do you know any other matter or thing that may benefit the defendants? If yea, state them.

KING & WALKER,
Defendants' Solicitors.

UNITED STATES OF AMERICA, *District of South Carolina, Circuit Court, Sixth Circuit.*

ALFRED M. HOBBY and T. P. BOND, and CHARLES MCINTIRE and CHARLES KELSEY. } *Complainants.* } *Defendants.*

In Equity.

Examination and deposition of Isaac Minis, Esq., a witness sworn and examined by the undersigned commissioners, in virtue of the annexed commission issued out of the honorable the circuit court of the sixth circuit of the United States, in the State of South Carolina; taken, and reduced to writing, in the city of Savannah, in the State of Georgia, this day of , A. D. eighteen hundred and thirty-nine.

Isaac Minis, aged fifty-eight years, being duly sworn, answers and deposes unto the annexed direct interrogatories as follows, to wit:

To the first direct interrogatory witness answers and says: I do know the parties.

To the second direct interrogatory, witness answering, saith: "I believe it to be the copy of an assignment made and delivered by John Tanner, at the time or about the time he failed."

To the third direct interrogatory, the witness answering, saith: "I was an indorser on the paper of John Tanner. "I did attend the meeting, but did not appear until the assignment was executed and handed over to Mr. Charles Kelsey."

To the fourth direct interrogatory, the witness answering, saith: "I know not what he did, he never would give me any account of his actings or doings, or any thing like information on the subject."

To the fifth direct interrogatory, thewitness answering, saith: "I settled my difficulties with the banks by compromise with them, and they discharged me from all claims which they had against me, either as principal or otherwise, without any particular statement from them."

To the sixth direct interrogatory, the witness answering, saith: "I never received any thing from Charles Kelsey;" "he never accounted to me in any manner for the effects or collections he may have received under John Tanner's assignment."

To the seventh direct interrogatory, the witness answering, saith: "I believe that the schedule is a copy of that made by John Tan-

ner under the assignment. I am not acquainted with the persons who appear to have been indebted to John Tanner, but understood that some of the parties had been made to pay.

To the 8th direct interrogatory, the witness answering, saith: "I did apply to Mr. Charles Kelsey to pay me such proportion of the debts collected as I might be entitled to on the claims which the banks had against me as indorser of John Tanner; but he always refused, and I never received one cent from him."

To the 9th direct interrogatory, the witness answering, saith: "I am ignorant of this matter, and know nothing about the affairs of the parties, so far as regards loss or otherwise."

Signed, J. MINIS.

ROBERT W. PORTER,
ROBERT M. CHARLTON,
Commissioners.

EDWARD J. WILSON, *Clerk.*

To the first cross interrogatory, the witness answering, saith: "I do not know at whose instance Charles Kelsey acted, but believe he was authorized by a majority of the creditors." I was dissatisfied with the arrangement, as I expected that it would result, as it has done, unsatisfactorily to me. "I came in after it had been arranged that Mr. Kelsey should receive the assignment."

To the second cross interrogatory, the witness answering, saith: "In compromising with the banks, they made their own estimation as to what they would relieve me as maker and indorser on all paper, and I settled with them, and was discharged."

To the third cross interrogatory, the witness answering, saith: "I was indebted to the banks. I had nothing to do with John Tanner; he never paid any thing for me. I am ignorant of any concern in which I was interested with him. Judgments were all entered up by the banks against me, and a discharge given me at the time I settled."

To the fourth cross interrogatory, witness answering, saith: "I did apply to Charles Kelsey to pay me the amount I was entitled to from the collections he might have made under the assignment of John Tanner; he always told me to make out the statement of such amounts from the collections made. I was not enabled to do so because I had no knowledge of what he had ever done or collected."

To the fifth cross interrogatory, the witness answering, saith: "I never presented any account to Charles Kelsey, or to Charles Kelsey and Company. I presumed that the assignment expressed what was the amount of my claim, and expected that all collections made under the assignment would be rateably divided among the creditors."

To the sixth cross interrogatory, the witness answering, saith: "I know nothing about the affairs of Charles Kelsey and Company: I never examined their books, nor were they in the habit of confidential communication with me."

To the seventh cross interrogatory, the witness answering, saith: That he knows nothing further that would benefit the parties.

Sworn to, and subscribed before us, this fourth of April, 1839.

Signed, J. MINIS.

ROBERT W. PORTER, [L. S.]
ROBERT M. CHARLTON, [L. S.]
Commissioners.

EDWARD G. WILSON, *Clerk.*

STATE OF GEORGIA, *City of Savannah.*

This indenture, made the seventh day of February, in the year of our Lord one thousand eight hundred and twenty, between John Tanner, of the city of Savannah, of the first part, and William Scarborough, Barna McKinne, Isaac Minis, William Scarborough, aforesaid, and Joseph P. McKinne, merchants and late copartners in trade, under the firm of Scarborough & McKinne, Charles Kelsey, Alfred M. Hobby, and Charles McIntire, merchants and copartners, under the firm of Charles Kelsey and Company, and Moses Herbert, of the second part.

Whereas the said John Tanner is indebted to the said Barnard McKinne, William Scarborough, Scarcorough & McKinne, Isaac Minis, Charles Kelsey and Company, and Moses Herbert, in the sum of forty-one thousand and thirteen dollars on the following promissory notes, made by the said John Tanner, to wit, one promissory note for two thousand and nine hundred dollars, payable to the said Barna McKinne, and endorsed by the said Barne McKinne and William Scarborough; one other promissory note, for three thousand seven hundred and twenty dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Isaac Minis; one other promissory note, for the sum of two thousand and nine hundred dollars, payable to the said William Scarborough, and endorsed by the said William Scarborough, Charles Kelsey and Company, and Isaac Minis; one other promissory note, for the sum of three thousand two hundred and seventy-six dollars, payable to the said William Scarborough, and endorsed by the said William Scarborough and Isaac Minis; one other promissory note, for the sum of three thousand six hundred and forty-five dollars, payable to the said William Scarborough, and endorsed by the said William Scarborough, Charles Kelsey and Company, and Isaac Minis; one other promissory note, for the sum of two thousand five hundred and fifty-two dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Moses Herbert, and Isaac Minis; one other promissory note, for the sum of three thousand two hundred and forty dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Charles Kelsey and Company; which said promissory notes are lodged in, or have been discounted at, the office of discount and deposite of the Bank of the United States, in the city of Savannah aforesaid, and on the following promissory notes made

by the said John Tanner, to wit, one for the sum of four thousand nine hundred dollars, payable to and endorsed by the said Scarborough and McKinne; one other for the sum of three thousand one hundred and twenty dollars, payable to and endorsed by the said Barna McKinne; one other for the sum of four thousand eight hundred dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Isaac Minis; one other for the sum of two thousand nine hundred and ninety dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Charles Kelsey and Company; and also one other for the sum of seven hundred and twenty dollars, payable to the said Barna McKinne, and endorsed by the said Barna McKinne and Charles Kelsey and Company; and also one other for the sum of two thousand and fifty dollars, payable to and endorsed by the said Isaac Minis; which said last mentioned promissory notes are lodged, or have been discounted, by the Planters' Bank of the State of Georgia.

Whereas, the parties of the second part stand engaged and bound for the payment of the note or notes aforesaid on which they are respectively endorsers. Now this indenture witnesseth that the said John Tanner for and in consideration of the premises and towards and for the payment and satisfaction of the said notes and moneys and such other money or moneys as shall or may become due to the said parties of the second part or any of them on account or by reason of said notes or their said endorsements thereon. Hath granted bargained sold assigned transferred and set over unto the said parties of the second part their executors administrators and assigns all and singular the notes, accounts, bonds, receipts, securities, interest of moneys due thereon, debt and debts in the inventory hereunto annexed particularized or mentioned, and likewise all and singular the books of accounts vouchers securities and evidences whatsoever touching or concerning the same, and likewise the following negro slaves, to wit: Richmond Mary and her three children Hannah Fanny and Lucy and the future increase and issue of the said female slaves, likewise pew number fifty-six (No. 56) in the new Presbyterian church in the city of Savannah, likewise one share in the stock of the Savannah theatre together with the evidences and writings touching or concerning the same, and likewise all and singular the household and kitchen furniture, plate and books of the said John Tanner. To have and to hold receive and take all and singular the debts moneys and all and singular other the hereinbeforementioned and intended to be herein assigned premises and every part and parcel of the same with their and each of their members and appurtenances unto the said party of the second part their executors administrators and assigns forever to and for the intent and purpose and upon condition that after the parties of the second part their executors administrators or assigns shall out of the monies to arise or be received out of the hereby assigned premises have retained and reimbursed themselves whatever costs charges damages and expenses which they or any

of them shall or may bear sustain pay or be put to for or by reason of these presents or of their intermeddling with or collecting or receiving the hereby assigned premises and shall have paid satisfied and discharged out of said moneys all such debts as by law are a charge or have a lien on said premises or are or may be entitled to payment out of the said premises or the moneys to arise or be received therefrom prior to the payment of the aforesaid promissory notes or the moneys due or to become due thereon or on account of the aforesaid engagements of the said parties of the second part, then that the residue of the said premises hereby assigned or of the monies to arise or be received thereout or therefrom shall be applied and disposed to the payment of the said promissory notes above described and of the moneys due or which shall become due for or by reason or on account of the said promissory notes and of the aforesaid endorsements and engagements by or of the said parties of the second part or any of them, proportionably and rateably according to amount of said notes so far as the said residue of said assigned premises or the produce thereof will extend to satisfy the same. And the said John Tanner for the consideration aforesaid, hath made ordained constituted and appointed and by these presents doth make ordain constitute and appoint the said parties of the second part their executors administrators and assigns his true and lawful attorney and attorneys for him and in his name and in the names of his executors and administrators but for the intent and purpose aforesaid to recover and receive by all lawful ways and means all and singular the said assigned debts, sums of money and other the premises and one or more attorney or attorneys under them to constitute and whatsoever the said parties of the second part or their attorney or attorneys shall lawfully do in the premises the said John Tanner doth hereby ratify and confirm, and the said John Tanner for himself his executors and administrators doth hereby covenant, promise, grant and agree, to and with the said parties of the second part, their executors adminstrators and assigns, that he the said John Tanner, his executors and administrators, shall and will, from time to time, and at all times hereafter, at the request of the said parties of the second part, or the major part of them, or their attorney or attorneys, make, do, perform and execute any further and reasonable act, matter or thing whatsoever for the ratifying, confirming and strengthening these presents, and for the assuring and more perfect assigning and making over the aforesaid notes, debts, sums of money, negroes, furniture, and all other the premises hereby mentioned or intended to be assigned unto the said parties of the second part, and for the proving the said debts and for the better and more effectually enabling the said parties of the second part, their executors or administrators, to recover, get in, and receive the same and any and every part thereof, to and for the

purposes aforesaid, as they the said parties of the second part or the major part of them, or their attorney or attorneys shall or may require.

In testimony whereof, the said John Tanner hath hereunto set his hand and seal the day and year first above written.

Signed JOHN TANNER.

Signed, sealed and delivered in the presence or James T. Johnson.

JNO. C. NICOLL, *N. P.*

Recorded June 15, 1820.

Schedule annexed—John Tanner's property.

Wm. Holbrook's, Jasper, note dated 6th of February, 1819, at 4 months	$1,087 02	
Interest from 6th August to February 1820, 5 months 23 days	41 65	
		1,128 67
Eli West's, Marion, dated May 1819, 6 months	156 95	
Interest from 6th November to 1st February, 2 months 25 days	2 96	
		159 91
Paulet & Rugal's, Burk county, 17th February 1819, at 4 months	1,058 98	
Interest from 17th June to 1st February, 7 months 14 days	52 70	
		1,111 68
Thos. Moore's, Dublin, 24th February 1818, at 6 months	923 78	
Interest from 24th August 1818, to 1st February, 1 year 5 months 7 days	112 21	
		1,035 99
Thos. Moore's, Dublin, 28th April 1818, at 6 months	200 25	
Interest from October 1818, to 1st February, 1 year 3 months 3 days	20 04	
		220 29
Hancock & Foke's, Louis. receipt for Thos. M. Berrien's note of 5th of December 1818, at 4 months	1,978 66	
Interest from 6th of April 1819, to 28th June, 2 months 25 days	36 93	
	2,015 59	

Then received Hancock & Foke's note for 1,143		872 59	
Interest on $872 59 from 28th June 1819, to 1st February, 7 months 3 days		41 30	
			913 89
Gab. Harris' receipt for Jas. Brook's note, Pat. Co. dated 19th February 1818, at 6 months	$393 32		
Interest from 6th August 1818, to 24th April 1819, 8 months 18 days	22 54		
	415 86		
Then received	250 00	is 165 86	
Interest on $165 86, from 24th April 1819, to 1st February, 9 months 7 days		10 31	
			176 17
H Smith's receipt for J. B. Elkin's note drawn, dated 21st of April 1818, 6 months		688 54	
Interest from 21st October 1818, to 19th of June, 7 months 28 days	36 44		
	724 98		
Then receiv'd	300 00	424 98	
Interest on $424 98 from 19th June 1819 to 1st February, 7 months 12 days		20 95	
			445 93
Alex. Bourie's, Esq. receipt for J. N. Newley's note, dated 6th of May 1817, at 3 months	150 79		
Interest from 6th of August 1817, 1st February, 2 years 5 months 23 days	30 00		180 79
Eli West's note, dated 17th of November 1819, at 4 months			442 59
Alex. Bourie's receipt for J. W. Wesley's Abbeville court house note, dated 6th May 1817, at 6 months	3,448 61		
Interest from 6th November, 1817, to 1st February, 2 years 2 months 25 days	616 87		4,065 48
Dan. McNeels, Fuquar & Colleman's note, Dublin, dated Jan. 12, 1819, 2 mos.		1,445 13	
Int from 12 Aug, 1819, to 1 Feb, 5 mos 19 d		54 47	
			1,499 60

Jos. Defrass, Sav'h, note, dated 15 May, 1819, payable 1 Jan, 1820,		435 18	
Interest on same for one month		2 90	
			438 08
Jas. Roes, Sav'h, note, dated Sept, 1819, at 5 mos			277 92
Wm. Shannond's note 24 March, 1819, at 6 mos. in the hands of Brown, Green & Co.		1,055 82	
Int from 24 Sept to 1st Feb, 4 m 7 d		29 82	
			1,085 64
Thos. Tanner's 3 notes with int calculated fm 1 Feb 1819,		5,478 02	
Int on $4,932 10 from 1 Feb 1819, 1 year		394 57	
			5,872 59
Morrison's & Nichol's rec't fa J. M. Russel's note, dated June 19, 1819, a 2 mos		199 25	
Int from 19 Aug to 1st Feb, 5 m 12 d		7 17	
			206 42
P. & H. T. Crapon's note dated 6 Nov 1819, a 6 mos			397 13
Packets & Arnold's note 15 Jan, 1819, a 4 ms	221 87		
Int from 15 May to 14 June, 1 m	1 48		
	223 85		
Then received	15 00	208 35	
Int on 208 35 from 14 June, 1819, to 1 Feb, 6 mo 1 d	10 48		
			218 83
Packets & Arnold's, dated 13 Nov, 1818, a 4 mos		528 58	
Int from 23 March, 1819, to 1 Feb, 10 m 8 d		35 73	
			364 31

The following notes are held by the P. Bank.

Ruddel & Kendrick, Nov 12, 1818, a 4 mos		1,825 50	
Int from 12 March, 1819, 10 m 19 d		129 34	
			1,954 84
Fullerwood & Welch, date 16 Feb 1819, a 4 mos		128 06	
Int fm 16 June, 1819, to 1st Feb, 7 m 15 d		6 40	
			134 46

Sandford & Lansdown, March 17, 1819, 6 mos	393 89	
Int fm 17 Sept to 1st Feb, 4 m 14 d	12 37	
		406 26
Parish & Statter's, March 22, 1819, a 6 mos	426 51	
Int from 22 Sept to 1st Feb, 4 mos 9 d	12 63	
		439 14
Wm. Shumond's, March 24, 1819, at one day,	250 00	
Int fm 25 March, 9 m 6 d	15 33	
		265 33
Shackelford & Kean's, Ap 3d 1819, a 6 mos	745 10	
Int. from 3 Oct 1819, 3 m 28 d	19 54	
		764 64
James Shackelford, Ap 6, 1819, a 6 mos	679 94	
Int from 6 Oct to 1st Feb 1820, 3m 25 d	18 00	
		697 94
James Shackelford, June 16, 1819, payable 26 Dec next	685 82	
Int to 1 Feb 1820, 1 m 6 d	5 48	
		691 30
Jas. Feirse, note, dated May 24, 1819, a 5 mos	416 91	
Int from 24 Nov, 2 mos 7 d	6 28	
		423 19
Hancock & Fokes', note 28 June, 1819, on demand with interest	1,143 00	
Int from date, 7 m 3 d	54 10	
		1,197 10
Myers & Nichol's rec't for H. Buford & J. Buford's joint and several note, dated 4 July, 1818, 2,548 18	2,548 18	
Int one year	203 85	
		2,752 03
Amt. held by Planters Bank, $9,726 25.		
J. R. Wamer's, note, dated 1 January, 1820, a 5 mos	355 67	355 67
David Lewis, in the hands of B. A. Caph of St. Mary's	68 10	68 10
Lethbridge & Ault. dated 10 March, 1819, 90 days		3,123 44
C. Kelsey & Co. amt of their acc		372 28
Est. D. Lewis, acc. in the hands of B. A. Capp		662 88
A. Buggs, Augusta amts.		9,022 85
Pott & McKinnes, account attached in the hands of R. Dennis		4,641 42
Pew No. 56 in the Presbyterian Church, paid		500 00
Share of theatre stock paid		300 00
Five negroes		1,800 00

House aad kitchen furniture, books, plate, &c. &c.	1,000 00
Interest on sundry notes in the hands of Brown, Green & Co.	194 39
	$52,209 17

STATE OF GEORGIA, *Chatham County,*
Clerk's Office, Superior Court.

I, Robert W. Pooler, clerk of the superior court of Chatham County, in the State of Georgia, do hereby certify that the foregoing pages contain a true exemplification from the records of said office.

In testimony whereof, I have hereto set my hand and affixed the seal of said superior court this twenty-third July, A. D. eighteen hundred and thirty-eight.

(Signed.) ROBERT W. POOLER,
Clk. S. C. C. C.

Exhibit or paper referred to by Isaac Minis in his answer to the second direct interrogatory to the annexed commission.

(Signed.) J. MINIS.

ROBERT W. POOLER, } *Commissioners.*
ROBT. M. CHARLTON, }

EDWARD G. WILSON, *Clerk.*

No. 27.

Interrogatories for and Answers of C. Kelsey.

A. M. HOBBY et al. } In Federal Court.
vs.
CHARLES KELSEY. }

Interrogatories propounded to Charles Kelsey.

1. Have you the articles of partnership between yourself and McIntire and Hobby?

2. What did you bring into the concern? What did C. McIntire bring into the concern? Had he not failed a short time before?

3. Had you any estate besides what yon invested in trade under the firm of Kelsey & Co? Had McIntire any?

4. Did you receive any accession of fortune during the time the

connexion between you and Hobby existed, except from the profits of trade?

5. Have you the articles of co-partnership between you and C. McIntire? If you cannot produce the articles of co-partnership, state what each of you brought into the concern?

Answers of Charles Kelsey to Interrogatories propounded to him.

1. I have no articles of co-partnership between Messrs. Hobby and McIntire and myself, nor do I recollect if there ever were such articles.

2. Mr. Hobby and myself went first into partnership in 1816, under the firm of C. Kelsey & Co. I was acquainted with business, and he was not. I brought into the concern about from $2,500 to $3,000 in capital, with good credit, substantial friends and a prosperous business. Mr. McIntire was taken into the concern by us in 1818 or 1819. He had for some time previously been our clerk. He had before that time failed at the north. He was well known to Mr. Hobby and myself. He brought little or no capital into the concern. We considered his knowledge of the business, and is industry, activity and integrity a full equivalent for a portion of the capital. The firm still continued with the name of Charles Kelsey & Co. Mr. McIntire was to receive the fourth, and Mr. Hobby and myself, the remaining three fourths between us.

3. Neither Mr. McIntire, so far as I know, nor myself, had any estate, but what was vested in the co-partnership.

4. To the fourth answers no.

5. To the fifth, he answers, that he has already stated what Mr. McIntire and himself brought into the partnership, and that they, as well as he recollects, had no articles of co-partnership.

C. KELSEY.

No. 28.

Testimony R. C. Cuyler taken by Commission.

HOBBY & BOND, *vs.* KELSEY & MCINTYRE. } The Federal Court.

Interrogatories to be administered to Richard A. Cuyler Esq., Savannah Georgia.

1. Were you (in connection with James M. Wayne Esq. under the firm of Wayne & Cuyler) attorneys for the Planters' Bank of Georgia in 1820 and 1822.

2. Did you in May 1820, or when, obtain judgments in favor of said Planters' Bank against Charles Kelsey & Co., on two promisso-

ry notes, drawn by John Tanner in favor of and endorsed by Barna McKinne, amounting together to thirty-seven hundred and ten dollars, or to how much did the judgment amount.

3. Will you please examine the statements and agreements hereunto annexed, and say if the payments credited by John G. Holcombe first book keeper of the said Planters' Bank, dated 2 February, 1822, and amounting to twenty-four hundred dollars, are allowed by you as in part a discharge of the said judgment.

4. Will you please state whether the balance in principal, interest and cash due on said judgments, did on the 2d February, 1822, amount to $1,857 21 cents, as stated in the account signed Wayne & Cuyler hereunto appended, and whether the said amount of $1,857 21 cents, was paid by Charles Kelsey & Co. according to the terms of the agreement.

KING & WALKER, *Deff'ts Att'ys.*

CHARLES W. ROCKWELL, *Commissioner.*

THE UNITED STATES OF AMERICA, *South Carolina District.*

ALFRED M. HOBBY & T. P. BOND,
vs.
CHA'S KELSEY & CHA'S MCINTIRE.

Cross interrogatories for Richard A. Cuyler Esq. of Savannah, a witness to be examined on the part of the defendants.

1. Do you know that John Tanner made an assignment to protect or secure his indorsers, and that Charles Kelsey was appointed the agent of the creditors, and took possession of Tanner's effects?

2. Do you know the amount of funds that came to Kelsey's hands as assignee of Tanner?

3. Do you know of Charles Kelsey paying any debt of Tanner's except the Planters' Bank of Georgia? And if you know of any other payments, say whether Kelsey & Company were not in such cases liable for the debt as well as Tanner?

4. Do you know whether Charles Kelsey ever accounted to the creditors of Tanner, for the funds which he received as assignee or agent of the creditors?

5. Do you know any thing which tends to show that Kelsey never accounted for Tanner's funds? Or any thing that shews that he did not pay the creditors of Tanner? Or did not pay them all? Or did not satisfy the creditors of his conduct? Or that some or which of them were not paid?

6. Do you know any thing else, tending to shew that Charles Kelsey never accounted fully for the assets of John Tanner? Declare all you know.

PETIGRU & LESESNE,
Complainants' Solicitors.

29 March, 1839.

HOBBY & BOND, *vs.* KELSEY & McINTIRE. } In the Circuit Court of the United States for South Carolina.

Examination and deposition of Richard R. Cuyler on the interrogatories, and by virtue of the commission hereto annexed, taken and reduced to writing before the undersigned commissioners at Savahnah in Georgia, this twenty-seventh day of March, one thousand eight hundred and thirty-nine.

Richard R. Cuyler, the witness named in the annexed commission and interrogatories as Richard A. Cuyler, aged forty-two years, being duly sworn on the holy Evangelists, deposes as follows.

1. To the first direct interrogatory he saith: That he was with the the Honorable James M. Wayne, under the firm of Wayne & Cuyler and with George W. Owens Esq., the attorney of the Planters' Bank of the State of Georgia in 1820 and 1822.

2. To the second direct interrogatory he saith: That he did obtain judgments in the superior court of Chatham county Georgia, at May term 1820, against Charles Kelsey, Alfred M. Hobby and Charles McIntire, under the firm of C. Kelsey and Company, on two promissory notes drawn by John Tanner, and payable to and endorsed by Barna McKinnie, and by said Charles Kelsey & Co., one for seven hundred and twenty dollars, and one for two thousand nine hundred and ninety dollars. One judgment was for seven hundred and twenty dollars, with interest at 8 per cent. from 24 November 1819, and costs of protest and suit, eighteen dollars sixty-two and a half cents; and the other for two thousand nine hundred and ninety dollars, with interest at 8 per cent. from the 22d day of October, 1819, and eighteen dollars sixty-two and a half cents, for costs of suit and protest.

3. To the third direct interrogatory he saith: That he has duly examined the four annexed statements and agreement referred to. Witness did credit the payments mentioned in the statement of John G. Holcombe, who was first book keeper of the Planters' Bank aforesaid, to said Charles Kelsey & Co., in the adjustment and settlement by them of said two judgments, as fully appears by the paper now marked (A) and signed by witness.

4. To the fourth direct interrogatory witness saith: That the balance of principal interest and costs, did on the second day of February, 1822, amount to $1,857 21 cents, for which said Charles Kelsey & Co., settled by their note, and which witness turned over in payment to the Planters' Bank. The witness says he believes, said note was duly paid by the said C. Kelsey & Co.

R. R. CUYLER.

Sworn to before me this 27 March, 1839.

C. W. ROCKWELL,
Commissioner.

The witness to the cross interrogatories answers as follows.

1. To the first cross interrogatory he saith: That he has no knowledge of any such assignment or if he ever knew or heard of such assignment he has not the slightest recollection of it, nor does he know any thing of any such agency of Charles Kelsey.

2. To the second interrogatory he saith: That he does not.

3. To the third interrogatory he saith: That he has no knowledge of any other payment by said C. Kelsey & Co., relating to said John Tanner, save the said payment to the Planters' Bank.

4. To the fourth interrogatory he saith: That he has no knowledge or information whatever on the subject enquired of.

5. To the fifth interrogatory he saith: That he knows nothing on the subject.

6. To the sixth interrogatory he saith: That he knows nothing further.

R. R. CUYLER.

Sworn to before me this 27th March, 1839.

C. W. ROCKWELL,
Commissioner.

Statement.

The PLANTERS BANK, *vs.* C. KELSEY, & Co.

Amount 1st judgment			$2,990 00
Costs			15 62½
Protest			3 00
On this judgment all the payments of C. Kelsey & Co., have been credited, as per book keepers certificate, and the balance is (without costs)			$973 72
Amount 2d judgment	$720		
Interest 24 Nov. 1819, to 2 Feb. 1822,	126 24		
		846 24	
Costs of suit and 2 protests		37 25	
Amount of balance			$1,857 21
And for this we have the note of C. Kelsey & Co. at 60 days from the 5 February	1,500		
Cash	357 21		
		$1,857 21	

We have also reduced the understanding to writing. 2d February, 1822.

WAYNE & CUYLER.

PLANTERS BANK, *vs.* CHARLES KELSEY & Co. Indorsers. } Judgment, May term, 1820.

Amount of judgment		$2,990 00
Interest 27 Oct. 1819		
Costs of suit		15 62½
Protest		3

PLANTERS BANK, *vs.* CHARLES KELSEY & Co. Indorsers. } Judgment, May Term, 1820.

Amount of judgment	$720 00
Interest 24th November, 1819	
Costs of suit	15 62
Protest	3 00

Statements of payments made by Charles Kelsey & Co., on account of the within judgments.

1820,	August 8	$400 00
	October 12	350 00
	December 13	300 00
1821,	February 9	300 00
	April 11	300 00
	June 15	250 00
	October 26	250 00
1822,	January 17	250 00
Twenty-four hundred dollars,		$2400 00

I certify the above to be a correct statement.

JNO. G. HOLCOMBE, 1*st B. K. P. B.*

February 2, 1822.

GEORGIA, *City of Savannah.*

On a settlement between the Planters' Bank and Charles Kelsey & Co. of the balance of two judgments, which the said bank holds against them, which balance amounts to eighteen hundred and fifty-seven dollars and twenty-one cents, the said Charles Kelsey & Co., have paid to the Planters' Bank, the sum of three hundred and fifty-seven dollars and twenty-one cents, and given their note with C. McIntire as indorser, dated at Savannah, the fifth day of February, one thousand eight hundred and twenty-two (being the next offering day of the Planters' Bank,) at sixty-one days.

And the said C. Kelsey & Co., have lodged in the hands of the Planters' Bank, Roger McKinne's note for one thousand and ten dollars and twenty-nine cents, and Thomas M. Bradford's note for five hundred and five dollars and seventy-one cents, as collateral security, for the payment of the said note for fifteen hundred dollars. C. Kelsey & Co., are to renew and reduce at the rate of ten per cent., the said note every sixty days.

When the Planters' Bank receive moneys or payments on account of the said McKinne and Bradford's notes, such moneys or payments are to be applied to the said note of fifteen hundred dollars, the said C. Kelsey & Co., still reducing at the rate of ten per centum the remainder of said note of fifteen hundred dollars. Should the said note of fifteen hundred dollars be paid before the Planters' Bank receive the amount of the notes of McKinne and Bradford, these latter notes are immediately to be delivered to the said C. Kelsey & Co.

WAYNE & CUYLER,
Attorneys for Planters' Bank.

Savannah, 2d February, 1822.

	$29 90	
	8	
	2)239 20	
	119 60	27 Oct. 1818, to
	59 80	Aug. 1820, 9 12.
	7 96	
	187 36	
	2,990 00	
	3,177 36	
	409 00	1st Cr.
Int. on	2,777 36	
	8	
		30)18 51
	6)22,218 88	
8 Aug. 1820, to 12 Oct.		6 1
1820, 2 mos. 4	3,703 14	
	2 49	24 06
	39 46	
	2,777 36	
	2,816 85	
	350 00	2d payment.
	2,466 85	
	8	
	12)19,734 80	
12 Oct. to Dec. 13, 1820,		30)16 44
1 month 1 day.	1,644 56	
	54 00	54
	16 98	
	2,466 85	
	2,483 83	
	300 00	3d payment.

(A) This is referred to in my testimony,
R. R. CUYLER.

2,183 83
8

12)17,470 64

14 56
13 12

27 68
2,183 83

2,211 51
4th payment. 300 00

1,911 51
8

6)15,292 08

2,548 68
9 Feb. 1821, to 11 April, 1821, 2 mos. 2 days. 86 86

26 34
1,911 51

$1,937 85

13 Dec. 1820, 9 Feb. 1821, 1 mo. 27 dy.

3)1456

4 8
2 7

336
96

12 96

30)25 48

8 4
2

16 8
1,937 85
300 5th paymt.

$1,637 85

14 56
1 92

12 54

14 56
1 44

13 12

12 74

$1,637 85
8

6)13,102 80

21 83
1 09

22 92
1,637 85

1,660 77
250 00

1,410 77
8

3)11,286 16

11 April, 15 June, 2 mos. 3 days.

30)10 91

3 6
3

10 8
6th payment.

(Brought forward) 3)11,286 16

37 62
3 44

41 06
1,410 70

1,451 83
250 00

1,201 83
8

6)9,614 64

16 02
5 87

21 89
1,201 83

1,223 72
Last payment. 250 00

973 72
846 24

1,819 96
37 25

31 25 1,857 21
6 1,500 00

37 25 $357 21

15 June, 26 Oct. 4 mos.
11 days.
30)9 40

3 13
3 1 31
1
3 44
34
7th payment.

26 Oct. 1821, to 17 Jan. 1822,
2 mos. 22 days.
3)801
267
2
534
52
5 86

30)801
26
2
52

720
8

6)57 60
2

115 20 2 years.
9 60
1 44 2 mos. 9 days.

126 24
720 00

846 24

480
16
9 160

1445

No. 29.

Testimony of R. W. Habersham, taken by Commission.

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } In the Federal Court.

Interrogatories for Richard W. Habersham, Esq., formerly of Savannah, and now of Clarksville, Georgia.

1. Did you as the attorney of David Taylor, Jr., obtain judgment against Charles Kelsey & Co. in May 1823, or at any other time for $1,070 19-100, on a certain bill of exchange drawn by John McKinne, of Augusta, in favor of Barna McKinne, and endorsed by him and accepted by said Charles Kelsey & Co.

2. Will you please state if the said judgment was paid by the said Charles Kelsey & Co., at what time it was paid. What was the whole amount, principal interest and costs which you received from them?

KING & WALKER,
Defendants' Attorneys.

Commissioners,
S. A. WALLS, Esq.
A. ERWIN, Esq.
Clarksville, Habersham County, Ga.

THE UNITED STATES OF AMERICA,
South Carolina District.

ALFRED M. HOBBY & T. P. BOND
vs.
CHAS. KELSEY & CHAS. MCINTIRE. }

Cross interrogatories for R. W. Habersham, Esq., of Clarksville, Georgia, to be examined on the part of the Defendants.

1. Do you know any thing of the dissolution of the partnership of Charles Kelsey & Co. about the 9th February, 1822, by which Alfred M. Hobby retired from the concern.

2. Do you know any thing to say whether C. Kelsey & Co., on the 9th day of February, 1822, were indebted to Barna McKinne in five thousand, three hundred and ninety-seven dollars 75-100, and to McKinne & Company in one thousand, six hundred and ninety-nine dollars, or in any such sum to either of them.

3. Charles Kelsey and Charles McIntire have sworn to a statement in which one thousand, six hundred and ninety-nine dollars are charged as owing in February, 1822, by C. Kelsey & Co. to McKinne & Company; and John McKinne of Augusta, in his evidence as a witness in this cause has sworn that Kelsey & Co. did not owe him such a sum, and that the books of Barna McKinne contain no evidence of the existence at any time of such debt.

Do you know any thing that tends to support the evidence of either party?

4. Do you know John McKinne, and what his general character is. Is he worthy of belief upon his oath?

PETIGRU & LESESUE,
Complainants' Solicitors.

20th March, 1839.

IN THE SIXTH CIRCUIT COURT UNITED STATES,
District of South Carolina.

HOBBY & BOND
vs.
KELSEY & MCINTIRE.

Deposition of Richard W. Habersham, a witness residing in the county of Habersham and State of Georgia, attorney at law, duly sworn and examined in the above cause.

1. To the first interrogatory on behalf of the defendants the witness answers that so many years have elasped since the transaction referred to, that he has no recollection as to the circumstances. On referring to his docquet book of suits now before him, he finds an entry in his own handwriting as follows:

David Taylor, Junr., *vs.* C. Kelsey & Co. Case on bill of exchange as acceptors, brought in the superior court of Chatham county to May T. 1822.

On examining his docquet of judgments now also before him, he finds in his own handwriting as follows:

David Taylor, Junr. *vs.* C. Kelsey & Co. Judgment superior court, Chatham county, May T. 1823. Judgment $1,070 19. Int. 30 April, 1821. Cost suit $14 62½. Settled. And on examining his receipt book, also now before him, he finds the receipt of David Taylor, Junr., as follows:

David Taylor, Junr.
vs.
C. Kelsey & Co.
} Judgmt. Chat. Sup. Co.

Judgment - - -	$1,070 19
Int. 30 Apl. 1821 to 14 Nov. 1823	217 58
	1,287 77
	Off Comm. $64 39

Balance, $1,223 38.

Rec'd Sav. 15 Nov. 1823, of Richard W. Habersham, the above sum of twelve hundred and twenty-three 38-100 dollars in full of the above.

$1,223 38. DAVID TAYLOR, Junr.

The witness therefore answers that he has no doubt that at the term of May, 1823 of the superior court of Chatham county,

he did obtain a judgment in favor of David Taylor, Junr., against C. Kelsey & Co. for the sum of $1,070 19, with interest at 8 per cent. from 31 April 1821 and $14 62½ for costs, founded on a bill of exchange of which C. Kelsey & Co. were acceptors. But by whom the said bill was drawn, or by whom indorsed, witness has no recollection, nor has he as far as he knows, any means of ascertaining, nearer to him than the record of the case in Savannah.

2. To the second interrogatory the witness answers that he finds by reference to his day book, in his own handwriting, that he received the amount of the said judgment referred to in his answer above, say $1,287 77, being the amount of principal and interest then due in full on the 15th Nov. 1823, and that he paid over the same on the same day to David Taylor, Junr., the plaintiff; and he has no doubt that the witness received the costs $14 62½ at the same time.

Witness has therefore no doubt that the said judgment was paid on the 14th or 15th November, 1823, but by whom paid to witness, he does not recollect.

RICHD. W. HABERSHAM.

Answered, sworn to and subscribed before us, 30th March, 1839.
S. A. WALES, *Commissioner.* [L. S.]
ALEXANDER ERWIN, *Commissioner.* [L. S.]

Answers to the Cross Interrogatories on behalf of the Plaintiffs.

1. 2. 3. To the first, second and third cross interrogatories, that he knows or recollects nothing.

4. To the fourth cross interrogatory he answers that he has known Col. John McKinne of Augusta, by reputation for a number of years past, and that his general character as far as witness knows, has always been that of an honorable man. From aught that witness has ever heard or known of him, he would not hesitate to believe him on his oath.

RICHD. W. HABERSHAM.

Answered, sworn to, and subscribed before us, 30th March, 1839.
S. A. WALES, *Commissioner.* [L. S.]
ALEXANDER ERWIN, *Commissioner.* [L. S.]

No. 30.

Testimony of James Hunter by Commission.

ALFRED M. HOBBY and THOMAS P. BOND, of Georgia,
vs.
CHAS. KELSEY and CHAS. MCINTYRE.

Interrogatories to be administered to James Hunter, Esq. a witness resident in Savannah, to be produced, sworn and examined on the part of the defendants.

1. Do you know the parties, complainants and defendants, in the title of these interrogatories named.
2. Were you or not in 1821 and 1822, or when, cashier of the branch of the Bank of the United States at Savannah ?
3. Did or not that bank and when, obtain a judgment for a large amount and for what amount, against Charles Kelsey and Company as indorsers of John Tanner, who were all the indorsers on notes on which the judgment was obtained, and in what order were they liable on them.
4. When and by whom was this judgment paid; state if you please the dates of the respective payments. Was or not the judgment paid by said Charles Kelsey and Charles McIntire ? When was it all paid ?
5. Do you know any other matter or thing, which may benefit the defendants ? If yea, state them.

KING & WALKER,
Defendants' Solicitors.

THE UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

ALFRED M. HOBBY and T. P. BOND
vs.
CHARLES KELSEY and CHARLES MCINTIRE.

Cross interrogatories for James Hunter, Esq. of Savannah, a witness to be examined on the part of the defendants.

Complainants object to any evidence of a judgment without producing the record or a transcript of it; and to any evidence of a note unless the note be produced, or the best evidence given which the case will admit of.

1. Do you know that Charles Kelsey was assignee of John Tanner, or agent of his creditors under deed deed to dispose of his effects, and pay his debts ?
2. Did you ever see any account of the assets of Tanner, and of his debts and of the sums received by Kelsey, and the sums paid by him.

3. Do you know any thing of a house and lot in Savannah, being received by the United States Bank, in part payment of a judgment against Charles Kelsey & Co. ? Do you know at what price it was taken by the bank ?

4. Do you not know, or have you not reason to believe that Charles Kelsey never accounted for the assets of John Tanner, that came to his hands ? Do you know of any single debt of Tanner's that he paid over and above those on which he Kelsey or his firm were indorsers ? Declare.

PETIGRU & LESESUE,
Complainants' Sols.

IN THE CIRCUIT COURT OF THE UNITED STATES,
District of South Carolina.

ALFRED M. HOBBY and THOMAS P. BOND,
vs.
CHARLES KELSEY and CHARLES McINTIRE.

Deposition of witnesses sworn and examined by and before the undersigned commissioners, upon the interrogatoties and in virtue of the commission hereto annexed, taken and reduced to writing at Savannah in the county of Chatham in the State of Georgia on the twenty-second day of April, eighteen hundred and thirty-nine.

James Hunter, Esq. of Savannah, a witness produced, sworn and examined on the part of the defendants, deposeth and answereth as follows, to wit:

To the first interrogatory: That he knows all the parties in the title of these interrogatories named.

2. To the second interrogatory: That he was cashier of the Branch Bank of the United States in Savannah from the year 1819, to its close in 1836.

3. To the third interrogatory: That the Bank of the United States did obtain judgment against Charles Kelsey and Company for a large amount, part whereof was on notes of John Tanner, whereon the said Charles Kelsey and Company were indorsers. The notes of John Tanner on which judgment was so obtained againstCharles Kelsey and Company were as follows:

John Tanner's note endorsed by William Scarbrough, Charles Kelsey and Company and Isaac Minis for twenty-nine hundred dollars - - - $2,900 00

John Tanner's note endorsed by William Scarbrough Charles Kelsey and Company and Isaac Minis, for three thousand six hundred and forty-five dollars - - 3,645 00

John Tanner's note endoised by Barna McKinne, Charles Kelsey and Company and Isaac Minis, for three thousand two hundred and forty dollars - - 3,240 00

And the same judgment was further in part on a note of E. K. Billings & Co., endorsed John Tanner, Wil-

liam Scarbrough, Isaac Minis, Barna McKinne, Charles Kelsey and Company, and Mose Hubert, for eleven hundred and forty-eight dollars thirty-three cents - 1,148 33

Principal Dollars. $10,933 33

And the witness says that the parties aforesaid to said notes, were liable in the order in which their names are above set forth. Said judgment was obtained in December, 1820.

4. To the fourth interrogatory, witness states, by reference to the memoranda and entries made in the books of the office of discount and deposit of the late Bank United States at Savannah, and from his own recollection, that the said Charles Kelsey and Company, on the 1st June, 1821, proposed to the office of the bank at Savannah, through its solicitor, R. W. Habersham, Esq., to give in payment of the claim of the Bank United States against them, Charles Kelsey & Co., on account of their liability for John Tanner and E. Billings, then in judgment against them, a house and lot subject to a mortgage of nine hundred dollars at - - $4,500
And merchandize at cost - - - - 7,559

That the said proposal was accepted by the bank. The goods were received about the 12th June, 1821, but there being incumbrances on the house and lot, which were not relieved untill February, 1822, the house and lot were not transferred at the time, but were sold in April, 1822, and the proceeds were transferred to the Bank United States. Witness receipted for the proceeds of a part of the goods and house and lot, to R. W. Habersham, Esq., solicitor of the bank, on the 9th August, 1822, and satisfaction was entered on the judgment against C. Kelsey & Co. in October, 1825.

5. To the fifth interrogatory: That he knows nothing further, which can benefit the defendants.

J. HUNTER.

Sworn to before me, this 22d day of April, 1839.
C. W. ROCKWELL, [L. S.]
Commissioner.

To the cross interrogatories, the witness, James Hunter, deposeth as follows:

1. To the first cross interrogatory: That he has no knowledge or recollection of who was the assignee of John Tanner, or the agent of his creditors.

2. To the second cross interrogatory: That it is probable he may have seen some statement of the assets of John Tanner, and of his liabilities in the course of business, but he has no recollection of them, nor that they had any connexion with Charles Kelsey & Co.

3. To the third cross interrogatory: That the said Charles Kelsey and Company (as witness has already stated) offered to the

bank in part payment of said judgment, a house and lot in Savannah, at the sum of four thousand five hundred dollars. Their offer was accepted. The said house and lot were sold for twenty-five hundred dollars, and after paying a mortgage on it, the sum of fourteen hundred and fifty dollars ninety-three cents was received by the bank.

4. To the fourth cross interrogatory: That he has no knowledge whatever of the state of the transactions between Charles Kelsey & Co. and John Tanner. Witness supposed that Charles Kelsey & Co. relieved themselves from their said indorsements with their own means, as they relieved themselves from other paper at the same time, and as they stipulated that the Bank of the United States should proceed to collect or make the money on said judgment, out of the other parties liable before them if possible, returning to them the part of the same, in proportion as the amount they paid bore to the judgment the bank held against John Tanner.

Witness does not know of the payment of any debt of John Tanner's made by Charles Kelsey & Co. or Charles Kelsey, except the settlement herein above set forth.

J. HUNTER.

Sworn to before me, this 22d April, 1839.

C. W. ROCKWELL, [L. S.]
Commissioner.

No. 31.

Exemplification of judgment in Bank U. States vs. C. Kelsey & Co.

UNITED STATES, *District of Georgia.*

To the honororable the Justices of the Sixth Circuit Court of the United States for the District of Georgia, the petition of the President, Directors, and Company of the Bank of the United States, sheweth:

That Charles Kelsey, Alfred M. Hobby, and Charles McIntire, of said district, trading under the firm of Charles Kelsey and Company, of Savannah, in said district, merchants and copartners, are indebted to your petitioners in the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents, exclusive of interest and costs of protest: For this, to wit, that heretofore, to wit, on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this honorable court, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, trading as aforesaid by their name and firm of Charles Kelsey & Co., according to the usage and custom of merchants made their certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to one John McKinne by the name and addition of

Mr. John McKinne, Augusta, by which said bill of exchange they, the said Charles Kelsey & Company, then and there requested the said John McKinne sixty days after the date thereof to pay to the order of one Thomas Gardner, by the name and addition of Mr. Thomas Gardner, nine thousand five hundred dollars, for value received, and then and there delivered the said bill of exchange to the said Thomas Gardner. And the said Thomas Gardner then and there endorsed and delivered the said bill of exchange to one William Scarborough, and the said William Scarborough then and there endorsed the said bill of exchange to your petitioner, and thereby then and there ordered and appointed the said sum of money in the said bill of exchange specified to be paid to your petitioners according to the tenor and effect thereof, and then and there delivered the said bill of exchange so endorsed as aforesaid to your petitioners, which said bill the said John McKinne afterwards, to wit, on the same day and year aforesaid, to wit, at Augusta, in the district aforesaid, upon sight thereof accepted according to the said usage and custom of merchants. And your petitioners aver that afterwards when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Augusta, in the district aforesaid, the said bill of exchange was duly presented and shewn to the said John McKInne for payment thereof, according to the usage and custom of merchants, and the said John McKinne was then and there requested to pay the said sum of money therein specified according to the tenor and effect of the said bill of exchange and of his said acceptance thereof, but that the said John McKinne did not nor would at the said time when the said bill of exchange was so presented and shewn to him for payment thereof as aforesaid, or at any time afterwards pay the said sum of money therein specified, or any part thereof, but wholly neglected and refused so to do, of all which said several premises the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, trading as aforesaid, had notice, by means whereof according to the said usage and custom of merchants, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire then and there became liable to pay to your petitioners the said sum of money in said bill of exchange specified, when they, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire should be thereunto afterwards requested, and being so liable, and in consideration thereof afterwards, to wit, on the same day and year aforesaid, to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this honorable court, they, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire undertook and promised your petitioners to pay them the said sum of money in the said bill specified when thereto afterwards they should be requested.

And also whereas heretofore, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and nineteen,

to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this honorable court, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, trading as aforesaid, under their name and firm of Charles Kelsey & Co., made their certain other bill of exchange in writing, bearing date the day and year last aforesaid, and then and there directed the said last mentioned bill of exchange to one John McKinne, by the name and addition of John McKinne, Esq., Augusta, Georgia, by which said bill of exchange the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, by their name and firm aforesaid, then and there requested the said John McKinne sixty days after the date of that their only bill of exchange of that tenor and date to pay to the order of one Thomas Gardner, by the name and addition of Mr. Thomas Gardner, six thousand five hundred dollars, for value received, and then and there delivered the said last mentioned bill of exchange to the said Thomas Gardner, and the said Thomas Gardner then and there endorsed and delivered the said bill of exchange to one William Scarborough, and the said William Scarborough then and there endorsed and delivered the said bill of exchange to your petitioner, and then and there ordered and appointed the said bill of exchange specified to be paid to your petitioners according to the tenor and effect thereof, which said bill of exchange was afterwards, to wit, on the same day and year last aforesaid to wit, at Augusta, in the district aforesaid, upon sight thereof accepted according to the said usage and custom of merchants. And your petitioners aver that when the said last mentioned bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Augusta, in the district aforesaid, the said bill of exchange so endorsed as aforesaid was presented and shewn to the said John McKinne for payment thereof, according to the said usage and custom of merchants, and the said John McKinne was then and there requested to pay the said sum of money therein specified according to the tenor and effect of the said bill of exchange and of his said acceptance thereof, but that the said John McKinne did not, nor would at the said time when the said bill of exchange was so presented and shewn to him for payment thereof as aforesaid, or at any time afterwards pay the said sum of money therein specified or any part thereof, but wholly neglected and refused so to do, of all which said several premises the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire afterwards, to wit, on the day and year last aforesaid, to wit, within the district aforesaid had notice. By means whereof, and according to the said usage and custom of merchants, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire then and there became liable to pay your petitioners the said sum of money in said last mentioned bill of exchange specified, when they should be thereunto afterwards requested, and being so liable, and in consideration thereof, the said Charles Kelsey, Alfred M. Hobby, and

Charles McIntire afterwards, to wit, on the day and year last aforesaid within the district aforesaid, and the jurisdiction of this honorble court, undertook and promised your petitioners to pay them the said sum of money in said last bill of exchange specified when thereto afterwards they should be requested.

And also, whereas heretofore to wit, on the first day of October in the year of our Lord one thousand eight hundred and nineteen, at Savannah, in the district aforesaid and within the jurisdiction of this honorable court, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, trading as aforesaid, made their certain other bill of exchange in writing bearing date the day and year last aforesaid, and then and there delivered the said bill of exchange last mentioned to one Thomas Gardner and thereby, then and there by their name and firm of Charles Kelsey and Company, requested one John McKinne by the name and addition of John McKinne, Esq., Augusta, Georgia, sixty days after the date of that their only bill of that tenor and date to pay to the order of one Thomas Gardner by the name and addition of Mr. Thomas Gardner, six thousand dollars for value received. And the said Thomas Gardner then and there endorsed and delivered the said bill of exchange last mentioned to one William Scarborough, and the said William Scarborough then and there endorsed the said bill of exchange last mentioned to your petitioners, and thereby then and there ordered and appointed the said sum of money in said bill of exchange specified to be paid to your petitioners according to the tenor and effect thereof, and then and there delivered the said bill of exchange so endorsed as aforesaid to your petitioners, which said last mentioned bill of exchange the said John McKinne afterwards on the same day and year aforesaid, to wit, within the district aforesaid, upon sight thereof, accepted according to the usage and custom of merchants, and your petitioners aver that afterwards when the said last bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Augusta, in the district aforesaid, the said last bill of exchange was duly presented and shewn to the said John McKinne for payment thereof according to the said usage and custom of merchants, and the said John McKinne was then and there requested to pay the said sum of money in the said bill of exchange specified, according to the tenor and effect thereof, and his said acceptance so made thereon as aforesaid, but that the said John McKinne did not nor would at the said time when the said bill of exchange was presented and shewn to him for payment thereof as aforesaid or at any time afterwards pay the said sum of money therein specified or any part thereof, but wholly neglected and refused so to do, of all which said several premises the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, afterwards to wit, on the same day and year last aforesaid, to wit, at Savannah in the district aforesaid, by means

whereof and according to the said usage and custom of merchants, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, then and there became liable to pay to your petitioners the said sum of money in the said last mentioned bill of exchange specified, when they should be thereunto afterwards requested. And being so liable and in consideration thereof, afterwards to wit, on the same day and year aforesaid, to wit, at Savannah in the district aforesaid and within the jurisdiction of this honorable court, they the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire undertook and promised your petitioners to pay them the said sum of money in said last mentioned bill of exchange specified when thereto afterwards they should be requested.

And whereas also to wit, heretofore, to wit, on the sixteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Savannah in the district aforesaid, certain persons using the name, style, and firm of E. B. Billings & Co., by their said name and firm of E. R. Billings & Co., made their certain promissory note in writing bearing date the day and year last aforesaid, and thereby and then and there promised four months after the date thereof to pay to one John Tanner by the name and addition of Mr. John Tanner or order eleven hundred and forty-eight dollars and thirty-three cents, at either bank in Augusta, for value received, and then and there delivered the said promissory note to the said John Tanner, and the said John Tanner then and there endorsed and delivered the said promissory note to one William Scarborough, and the said William Scarborough then and there endorsed and delivered the said note to one Isaac Minis, and the said Isaac Minis by the name of I. Minis then and there endorsed and delivered the said note to one Barna McKinne, and the said Barna McKinne then and there delivered the said note to Charles Kelsey, Alfred M. Hobby, and Charles McIntire by their name and firm of Charles Kelsey & Co., and the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire by their said name and firm of Charles Kelsey & Co., then and there endorsed and delivered the said promissory note to one Moses Herbert, and thereby then and there ordered and appointed the contents thereof to be paid to the said Moses according to the tenor and effect thereof. And of the said indorsements so made thereon as aforesaid, and the said Moses Herbert, by the name of M. Herbert, then and there endorsed the said note to your petitioners and thereby then and there ordered and appointed the said sum of money therein specified to be paid to your petitioners according to the tenor and effect of the said note and of the endorsement so made thereon as aforesaid, and then and there delivered the said note so endorsed to your petitioners. And your petitioners in fact say that afterwards when the said note became due and payable according to the tenor and effect thereof, to wit, at one of the banks in Augusta, to wit, in the district aforesaid, to wit, on the nineteenth day of February, in the year of our Lord one thousand eight hundred and twenty, payment of the said note was duly re-

quired and demanded at one of the banks in Augusta aforesaid, to wit, at the Bank of Augusta, according to the tenor and effect of the said note and of the endorsements so made thereon as aforesaid which was then and there refused; whereupon afterwards, to wit, on the same day and year last aforesaid, to wit, at Augusta in the district aforesaid, the said last mentioned note was presented and shown unto the said E. B. Billings & Company, and payment thereof demanded from them according to the tenor and effect of the said note and of the indorsements so made thereon as aforesaid, which was then and there refused, of all which said several premises in this last count mentioned and contained, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, then and there afterwards, to wit, on the day and year last aforesaid to wit, at Savannah, in the district aforesaid, had notice; by means whereof and by force of the statute in such case made and provided, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, then and there became liable to pay to your petitioners the said sum of money in the said note specified, when thereto afterwards they should be thereunto requested. And being so liable and in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this court, they the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire then and there undertook and promised your petitioners to pay them the said sum of money in the said note specified, when thereto afterwards they should be requested.

5th. And also where as heretofore to wit on the twenty-second day of November in the year of our Lord one thousand eight hundred and nineteen to wit at Savannah in the district aforesaid one John Tanner made his certain promissory note in writing bearing date the day and year last aforesaid and thereby then and there promised sixty-one days after the date thereof to pay to the order one William Scarborough twenty-nine hundred dollars without defalcation for value receivd and then and there delivered the said promissory note to the said William Scarborough and the said William Scarborough then and there endorsed and delivered the said promissory note to the said Charles Kelsey, Alfred M. Hobby and Charles McIntire by their name and firm of Charles Kelsey & Co., and the said Charles Kelsey, Alfred M. Hobby and Charles M'Intire by their said name and firm of Charles Kelsey & Co. then and there endorsed the said promissory note and thereby then and there ordered and appointed the said sum of money therein specified to be paid to one Isaac Minis according to the tenor and effect thereof and then and there delivered the said note so endorsed as aforesaid to the said Isaac Minis, and the said Isaac Minis by the name of I. Minis then and there endorsed the said note to your petitioners and thereby then and there ordered and appointed the said sum of money in said note specified to be paid to your petitioners according to the tenor and effect of the said note and of the

said endorsements so made thereon as aforesaid and then and there delivered the said note so indorsed to your petitioners. And your petitioners in fact say: that when the said note became due and payable according to the tenor and effect thereof afterwards to wit on the twenty-fifth day of January in the year of our Lord one thousand eight hundred and nineteen to wit at Savannah in the district aforesaid the said note so endorsed as aforesaid was presented and shewn to the said John Tanner for payment thereof according to the tenor and effect thereof and he was then and there requested to pay the said sum of money therein specified according to the tenor and effect of the said note and of the said endorsement so made thereon as aforesaid, but that the said John Tanner did not nor would at the said time when the said note was so presented and shewn to him for payment thereof as aforesaid or at any time afterwards pay the said sum of money therein specified or any part thereof but wholly neglected and refused so to do, of all which said several premises the said Charles Kelsey, Alfred M. Hobby and Charles McIntire afterwards to wit on the same day and year last aforesaid to wit at Savannah in the district aforesaid had notice. By means whereof and by force of the statute in such case made and provided the said Charles Kelsey, Alfred M. Hobby andCharles McIntire then and there became liable to pay to your petitioners the said sum of money in the said last note specified when thereto afterwards they should be requested. And being so liable and in consideration thereof afterwards to wit on the same day and year last aforesaid to wit at Savannah in the district aforesaid and within the jurisdiction aforesaid, the said Charles Kelsey, Alfred M. Hobby and Charles McIntire undertook and promised your petitioners to pay them the said sum of money in the said last mentioned note specified, when thereto afterwards he should be requested.

6th. And also afterwards to wit on the thirteenth day of December in the year of our Lord one thousand eight hundred and nineteen to wit, at Savannah within the district aforesaid one John Tanner made his certain other promissory note in writing bearing date the day and year last aforesaid and thereby then and there promised sixty-one days after date thereof to pay to the order of one William Scarborough three thousand six hundred and forty-five dollars for value received and then and there delivered the said last mentioned note to the said William Scarborough, and the said William Scarborough then and there endorsed and delivered the said last mentioned note to the said Charles Kelsey, Alfred M. Hobby and Charles McIntire by their name and firm of Charles Kelsey & Company afterwards to wit on the same day and year last aforesaid to wit, at Savannah in the district aforesaid endorsed the said last mentioned promissory note and thereby then and there ordered and appointed the said sum of money therein specified to be paid to one Isaac Minis according to the tenor and effect of said note and then and there delivered the said note so endorsed to one

Isaac Minis, and the said Isaac Minis by the name of I. Minis then and there endorsed and delivered the said note to your petitioners and thereby then and there ordered and appointed the said sum of money in the said note specified to be paid to your petitioners according to the tenor and effect thereof and of the said endorsement so made thereon as aforesaid. And your petitioners in fact say that when the said note became due and payable according to the tenor and effect thereof to wit on the fifteenth day of February in the year of our Lord one thousand eight hundred and twenty to wit at Savannah in the district aforesaid the said last mentioned promissory note so endorsed as aforesaid was presented to the said John Tanner for payment thereof and he was then and there requested to pay the said sum of money in the said note specified according to the tenor and effect thereof and of the said endorsement so made thereon as aforesaid, but that the said John Tanner did not nor would at the said time when the said note was to presented and shewn to him for payment thereof as aforesaid or at any time afterwards pay the said sum of money therein specified or any part thereof but wholly neglected and refused so to do, of all which said several premises in this count mentioned the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, afterwards to wit on the day and year last aforesaid to wit at Savannah in the district aforesaid had notice. By means whereof and by force of the statute in such case made and provided the said Charles Kelsey, Alfred M. Hobby and Charles McIntire then and there became liable to pay to your petitioners the said sum of money in said last mentioned note specified when thereto afterwards they should be requested. And being so liable and in consideration thereof they the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, afterwards to wit on the same day and year last aforesaid, to wit, at Savannah in the district aforesaid and within the jurisdiction aforesaid undertook and promised your petitioners to pay them the said sum of money in said last note specified when thereto afterwards requested.

7th. And whereas, also, heretofore, to wit, on the twentieth day of December, in the year of our Lord one thousand eight hundred and nineteen, to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this honorable court, one John Tanner made his certain other promissory note in writing, bearing date the day and year last aforesaid, and thereby, then and there promised sixty-one days after the date thereof, to pay to the order of one Barna McKinne, by the name of Mr. Barna McKinne, thirty-two hundred and forty dollars, without defalcation, for value received, and then and there delivered the said promissory note to the said Barna McKinne, and the said Barna McKinne, then and there indorsed and delivered the said last mentioned promissory note to the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, trading as aforesaid, and the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, by their name and firm of Charles Kelsey & Co.,

afterwards, to wit, on the same day and year last aforesaid, to wit, at Savannah, in the district aforesaid, and within the jurisdiction of this honorable court, endorsed the said promissory note, and thereby then and there ordered and appointed the said sum of money in the said last mentioned note specified, to be paid to your petitioners according to the tenor and effect thereof, and of the endorsements so made thereon as aforesaid, and then and there delivered the said promisory note, endorsed as aforesaid, to your petitioners; and your petitioners aver that when the said last mentioned note became due and payable according to the tenor and effect thereof, to wit, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and twenty, to wit, at Savannah, in the district aforesaid, the said promissory note, so endorsed as aforesaid, was presented and shewn to the said John Tanner for payment thereof, and he was then and there requested to pay the said sum of money in the said note specified, according to the tenor and effect thereof, and of the said endorsements so made thereon as aforesaid, but that the said John Tanner did nor would at the said time when the said note was so presented and shewn to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum of money therein specified, or any part thereof, but wholly neglected and refused so to do, of all which said several premises in this last count mentioned the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, afterwards, to wit, on the same day and year last aforesaid, to wit, at Savannah, in the district aforesaid, had notice, by means whereof and by force of the statute, in such case made and provided, the said Charles Kelsey, Alfred M. Hobby, and Charles McIntire, then and there became liable to pay to your petitioners the said sum of money in the said note last mentioned, specified, according to the tenor and effect of the said note when thereto afterwards requested, and being so liable, and in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, to wit, at Savannah, in the district aforesaid, and within the jurisdiction aforesaid, they, the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, then and there, undertook and promised your petitioners to pay them the said sum of money in said last note specified, when thereto afterwards they should be requested. Yet, the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, although often requested the said several sums of money in the said several bills of exchange, promissory notes mentioned, to pay to your petitioners, have not paid the same or any part thereof, but to pay the same have, and do still refuse, to the damage of your petitioners fifty thousand dollars. And your petitioners aver, that the Bank of the United States, of which your petitioners are the president, directors and company as aforesaid, was established under and by virtue of an act of the Congress of the United States, entitled "An act to incorporate the subscribers to the Bank of the United States," passed on the tenth day of April, in the year of our Lord one thousand eight hundred and sixteen, by

which said act your petitioners are made able and capable to sue in any circuit court of the United States. And that your petitioners are citizens of the State of Pennsylvania, and that the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, are citizens and inhabitants of the State of Georgia, and therefore they bring suit. Wherefore your petitioners pray that process may issue requiring the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, personally, or by attorney, to be and appear before the honorable the sixth circuit court of the United States, at a court to be holden at Milledgeville, on the sixth day of May next, then and there to answer your petitioners in an action on the case, and so forth.

HABERSHAM & DRYSDALE,
Attorneys for Petitioners.

UNITED STATES, GEORGIA DISTRICT,
Sixth Circuit, May Term, 1820.

THE PRESIDENT, DIRECTORS and COMPANY THE BANK OF THE UNITED STATES.
vs.
CHARLES KELSEY and Company.
} Case.

The President of the United States to the Marshal of the District of Georgia, greeting:

The defendants, Charles Kelsey, Alfred M. Hobby and Charles McIntire, are hereby required personally, or by their attorney, to be and appear before the honorable the sixth circuit court of the United States, at a court to be holden at Milledgeville, in and for the district of Georgia, on the sixth day of May next, then and there to answer the plaintiffs demands in an action on the case, and so forth, to their damage fifty thousand dollars, as in default of such appearance, the said court will proceed as to justice shall appertain.

[L. S.] Witness the Honorable John Marshall, Esq., Chief Justice of the Supreme Court of the United States, this twenty-third day of March, in the year of our Lord one thousand eight hundred and twenty.

GEORGE GLEN, *Clerk.*

HABERSHAM & DRYSDALE,
Plaintiffs' Attorneys.

We acknowledge service of this writ.

C. KELSEY,
CHAS. McINTIRE.

28th March, 1820.

Received 29th March, 1820.

J. G. H. OSBORNE, *D. M.*

DISTRICT OF GEORGIA, *30th March*, 1820.

Served a copy of the within writ on A. Hobby by leaving it at the store of C. Kelsey & Co.

The return of J. G. H. OSBORNE, *D. M.*

DISTRICT OF GEORGIA, *Sixth Circuit Court.*

THE BANK OF THE UNITED STATES,
vs.
CHAS. KELSEY, ALFRED M. HOBBY and CHAS. McINTIRE.

And now, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and twenty, the said Bank, by Habersham and Drysdale, their attornies, appeared in court, and the said Charles Kelsey, Alfred M. Hobby and Charles McIntire, being called, made default. But, because it is unknown what damages the said Bank has sustained by occasion of the premises, it is commanded that by the oath of good and lawful men of the county aforesaid, it be diligently inquired what damages the said Bank has sustained, as well by reason of the premises aforesaid, as for their costs and charges in and about their said suit in this behalf expended, and the said Charles Kelsey, Alfred M. Hobby and Charles McIntire in mercy, &c.

RICHARD W. HABERSHAM.
Plaintiffs' Attorney.

Judgment signed and filed this twenty-eighth day of November, A. D. 1820.

GEORGE GLEN, *Clerk.*

We find for the plaintiffs the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents, for principal, and the sum of two thousand four hundred and sixty-nine dollars and ninety-one cents for interest, and twenty-one dollars for cost of protest and costs of suit.

THO. H. HARRIS, *Foreman.*

Savannah, 16 December, 1820.

THE UNITED STATES, *Georgia District.*

THE PRESIDENT, DIRECTORS & Co. OF THE BANK U. STATES
vs.
CHARLES KELSEY & Co.
In the Sixth Circuit Court, December T. 1820.—Case.

Afterwards, to wit, on the sixteenth day of December, one thousand eight hundred and twenty, before the justices of the said court, came the within named plaintiffs by their attorney within named, and the jurors of the jury aforesaid, whereof mention is

within made, being called, elected, tried and sworn likewise come who to speak the truth of the within contained upon their oaths say we find for the plaintiffs the sum of thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents for principal and the sum of two thousand four hundred and sixty-nine dollars and ninety-one cents for interest and twenty-one dollars for costs of protest and costs of suit. Therefore it is considered that the said plaintiffs do recover against the said Charles Kelsey & Co. their damages aforesaid by the jury aforesaid in form aforesaid assessed and also eighteen dollars and eighty-three cents for their costs and charges aforesaid to the said plaintiffs by the said court, now herewith by their assent of increase adjudged, and the said Charles Kelsey & Co. in mercy, &c.

RICHARD W. HABERSHAM, *Plffs. Atty.*

Judgment signed and filed this 30th day of December, 1820.

GEO. GLEN, *Clk.*

UNITED STATES, *District of Georgia,*
In the Sixth Circuit Court, United States.

Satisfaction is acknowledged between the Bank of the United States plaintiff and Charles Kelsey, Alfred M. Hobby and Charles McIntire lately trading under the firm of Charles Kelsey & Company defendants, of a plea of trespass on the case for thirty-two thousand nine hundred and thirty-three dollars and thirty-three cents with interest and costs, as well in behalf of the said Bank of the United States as of Ann Gardner administratrix of Thomas Gardner to whom the judgment recovered in the said suit hath been assigned by the said Bank of the United States.

RICH. W. HABERSHAM,
Att'y for plaintiffs and for Ann Gardner, adm'x of Thos. Gardner, Assignee.

Satisfaction filed 5 Oct. 1825.

GEO. GLEN, *Clk.*

THE UNITED STATES OF AMERICA,
District of Georgia, ss.

I, George Glen, clerk of the circuit court of the United States for the district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me carefully compared with the originals filed and being of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of the said court, this seventeenth day of April in the year of our Lord one thousand eight hundred and thirty-nine.

[L. S.]

THE UNITED STATES OF AMERICA,
District of Georgia, ss.

I, Jeremiah Cuyler, judge of the district court of the United States for the district of Georgia, do hereby certify that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia, that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof I have hereto set my hand and seal, this seventeenth day of April, in the year of our Lord 1839.

(Signed.) J. CUYLER.

No 32. *Summons of Clerk to attend a Reference.*

CLERK'S OFFICE, *South Carolina District*,
April 10, 1839.

HOBBY & BOND
vs.
KELSEY & McINTIRE.

The parties are notified to attend before the clerk under the order of reference made in this case on Friday afternoon, 4 o'clock, the 12th inst. at the residence of the clerk in Laurens street.

(Signed.) JAMES JERVEY, *Dist. Clerk.*

No 33. *Report of Clerk.*

UNITED STATES OF AMERICA, *South Carolina District.*

HOBBY & BOND
vs.
KELSEY & McINTIRE.
Clerk's Report, April Term, 1839.

In Equity.

Under the order made January 9, 1839, the clerk had the parties before him, and respectfully reports upon the matters referred.

From various letters produced and proved, the fact of subsisting transactions between Kelsey & Co. and John McKinne and John McKinne & Co. and Barna McKinne is fully established, and a receipt was produced signed J. McKinne, dated 3d August, 1825, purporting to be in full of all demands against C. Kelsey & Co. as well on J. McKinne individual account as on account of McKinne & Co. A letter from A. M. Hobby one of the firm of C. Kelsey & Co. to B. McKinne, dated 22d June, 1820, acknowledges an amount to the order of B. McKinne.

C. Kelsey & Co. by S. Kneeland on the 22 June, 1820, placed in the hands of C. Breithaupt for collection, certain Bridge bills, on which judgment was obtained in Edgefield district, 20 March, 1824, of these C. Kelsey (on the 24 April, 1838,) received from the clerk of Edgefield district $1,150. The receipt authorizes the commissioners in equity to retain in his hands such part of the funds arising from the sale of H. Shultz property as by an apportionment made January 7, 1836, these bills were entitled to viz. $469 66, until said bills are returned to said clerk.

To establish the charge for premium on exchange letters were produced of various dates, comprising the period of the closing of the concerns of Kelsey & Co., quoting the rates of exchange from 3½ to 6½ for sixty days. A witness was produced and examined, who swore that to the best of his knowledge, the firm of Kelsey & Co. did not draw on their shipments, which were made with no such view, but they placed funds in New York, as he believed, to pay the debts of the concern. They purchased bills, paying the current premium, and never to his knowledge received any premium on drafts. There was no evidence given to prove the amount of premium actually paid on remitting funds for the New York creditors, but as they must have been paid by remittances, either in bills or produce, and it being stated by their clerk as his belief that they did not draw upon their shipments of cotton, it is reasonable to infer that the funds must have been placed there by bills, for which the current premium was paid or a credit established upon which they were entitled to draw. That charge is therefore allowed.

From the accounts stated and amounts allowed the defendants seem to be entitled to a balance in their favor of $2,031 95, ascertained as follows:

Dr.		Cr.	
Debts acknowledged by exhibit B.	$29,523 12	Credits claimed, original. Statement 1822,	26,057 61
" " " C.	1,704 29	Payments in addition to above exhibit B.	2,817 05
	31,227 41	Made or discovered subsequently to the above	4,384 70
Balauce due defendants	2,031 95		
	$33,259 36		$33,259 36

(Signed.) JAMES JERVEY,
District Clerk.

PARTICULARS.

Paid Phelps & Co. - - - - -	159 25
T. H. Nichols, - - - - -	75 00
C. Breithaupt, - - - -	35 00

Berrian & Davis, U. S. Bank, - - -	300 00
Do other services, - - -	900 00
Haines & Johnston, - - - -	170 24
Exchange debts N. Y. 14,000 a 5½ - - -	735 00
Planters Bk. J. Tanner's notes, - - -	1,857 25
Acc. against A. M. Hobby, - - - -	153 00
	$4,384 70

THE UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

A. M. HOBBY et al.
vs.
KELSEY & McINTIRE,

Exceptions by Complainants to tho Report of the Clerk.

1. That the letters produced to prove that Kelsey & Co. were debtors to McKinne & Co. prove the reverse, and shew only that Kelsey & Co. drew and accepted bills for the accommodation of McKinne. That the statement exhibited by which it was pretended the debt was settled, itself disproves the debt as charged, shewing only a payment to J. McKinne, in 1825, of $560 80, in Bridge bills, then of little value. The same account shows that J. McKinne owed Kelsey & Co. $106 81, that was at all events discounted in the settlement; and there is such a variance between the charge made by the defendants and their proof, as to throw on the demand that discredit which must attach to contradictory statements and obscure accounts.

2. That the letter produced as evidence of the existence of the debt to Barna McKinne, is no evidence of any thing more than that Kelsey & Co. had Bridge bills for which they were accountable to him.

3. That as to the Bridge bills, the report neither states the evidence, nor finds the fact, that the defendants are or are not liable to the complainants for any thing; and if for any thing, for how much; and if for principal, whether for interest; and if for interest, from what time.

4. That the allowance of $900 paid to Berrien & Davis is objectionable, because, 1st, $300 of the same were allowed before, and is now twice charged; 2d, that the residue, of $600, was paid before the dissolution; and the putting of the same among the debts due by the concern is contrary to the fact.

4. That the $107 24, charged as so much paid Haines & Johnston, over and above the amount in the schedule, is irregular, be-

cause the schedule should govern with regard to debts as well as assets.

5. That $735 are allowed for exchange, without proof, against the meaning of the articles of dissolution, and the decretal order does not warrant the adoption of a rule borrowed from the one-sided testimony of the witness, who believes that Kelsey & Co. paid exchange, and knows nothing of their receiving any.

6. That $153 are charged to Hobby, without evidence. That G. H. Kelsey swore to his recollection of having seen his name in the books, which never before was considered a ground to charge any man with a debt.

7. That $1,857 23-100 are allowed as an afterthought, to be charged for notes of J. Tanner indorsed by Kelsey & Co., though there is no proof of the payment of the money, and it is in evidence that Kelsey was assignee of Tanner, and received all his assets, and never accounted for them. And it is incredible that such a debt should not only have been omitted at the dissolution but in the account rendered on oath, ten years afterwards, and should now be set up without evidence.

8. Under the decretal order it was the clerk's duty to make a new report, and not to tack the result of his late enquiries to his old report.

Against the old report, the complainants renew their old exceptions, viz:

1. That the complainants are entitled to four hundred and twenty-one dollars, their proportional part of the money recovered on the Bridge bills, with interest from January, 1836—$352 87.

2. That the amounts charged as paid to Barna McKinne and J. McKinne & Co. should be excluded from the debts of Kelsey & Co., or at all events charged only at the rate of Bridge bills.

3. That no debts should be allowed but those included in the schedule at the time of the dissolution.

4. That the clerk should have reported the evidence shewing that Hobby carried into the concern ten thousand dollars in money.

5. That the defendants should give credit for two thousand five hundred dollars, the amount of the price of Joseph George's house; and the amount of Tanner's debt to the firm ought to be charged as received, inasmuch as the evidence of Minis, and the bill filed by Kelsey, in the federal court, show that Kelsey compromised with the bank as creditor of Tanner, and paid them nothing in satisfaction of Tanner's paper (for which Kelsey & Co. were responsible) but the house of George.

6. That complainants are entitled to five thousand five hundred dollars, with interest from the 9th day of February, eighteen hundred and twenty-two.

PETIGRU & LESESNE,
Complainants' Solicitors.

THE SOUTHERN CIRCUIT OF UNITED STATES.

HOBBY AND BOND
vs.
KELSEY AND MCINTIRE. } Defendants' Exceptions.

1. The defendants submit that on the evidence produced, the receipt of C. Breithaupt of 2d May, 1822, for the Bridge bills lodged with him for suit; the letter of S. Kneeland, of the 1st June, 1830; and the tender made of the Bridge bills to the complainants; they, the defendants, did all that by their covenant of 9th February, 1822, they were bound to do, respecting these Bridge bills.

2. The defendants submit and contend that Exhibit A, herewith filed, contains a correct statement of the accounts between them and the complainant, A. M. Hobby, made upon true mercantile principles, and that a balance of $15,839 73, is now due to them by the concern of Charles Kelsey & Co., of which Mr. Hobby was a partner, dissolved in 1822.

3. The defendants submit that Exhibit B is a correct statement of their account with the assigned estate of John Tanner, and the balance still due to them by that estate is carried into the general account in Exhibit A.

4. That the actual expenses of the defendants in collecting the debts of the firm, consisting of rent of counting room, travelling expenses, postages, clerk's hire, and incidental expenses, as charged in Exhibit A, ought to be allowed them.

5. That a commission of 2½ per cent. on the amounts collected and paid ought to be allowed to them.

6. That a commission of $279 50 ought to be allowed to them on the security which they were obliged to obtain on their application for an injunction at the suit of the Bank of the United States, and from which the complainant was bound to protect them. And with a view of bringing the point more definitely under the consideration of the court and not as an exception to the report, the defendants submit that they ought to be allowed the charge of $4,000, stated in Exhibit A as damages which they sustained by the non-performance of his covenant, by the complainant to protect them from the said judgment against them at the suit of the Bank United States.

KING AND WALKER,
Defendants' Solicitors.

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } Exhibit A.

Account of C. Kelsey and C. McIntire with the old concern of C. Kelsey & Co., in which A. M. Hobby was a partner.

Amount of debts owing by the firm of C. Kelsey & Co., as per schedule of 22d January, 1822, by which the settlement was made on the dissolution with A. M. Hobby,	$26,057 61
Amount of debts owing by C. Kelsey & Co., omitted in said schedule, and since paid by C. Kelsey and C. McIntire,	2,817 05
Amount paid Davis & Berrien for defending suit of State Bank for endorsements for the McKinnes, as per receipts and letter,	900 00
Balance due T. Phelps & Co., not included in said schedule, and since paid by C. Kelsey and C. McIntire,	159 25
Exchange paid on debts due in New York and there paid, amounting to $14,700, at 5 per cent.,	735 00
Loss sustained by discount on amount of money received on collections made of the debts due the concern,	788 23
Rent of counting room, as per estimate,	800 00
Travelling expenses incurred in collecting debts,	500 00
Postages,	300 00
Clerk's hire,	500 00
Expenses incurred in suit of T. H. Nichols for debt due him,	75 00
Commission on debts collected by us due to the firm, $29,871 31, at 2½ per cent.,	746 77
Commission on debts paid out, $34,000, at 2½ per cent.,	850 00
Attorney's fees paid Davis & Berrien in the case of D. Taylor, Jr., and the suit of the executors of Thomas Gardner,	300 00
Incidental expenses,	1,000 00
Commission on security for injunction in suit of executors of T. Gardner, $5,590, at 5 per cent.,	279 50
Damages in consequence of the levy in the above case,	4,000 00
Amount due to new concern of C. Kelsey & Co. by A. M. Hobby in 1832,	153 00
Costs of suit on Bridge bills, paid C. Briethauft,	35 00
Paid Haines, Johnson, & Co. over and above amount specified in schedule,	170 24

To balance due by the assigned estate of John Tanner, accruing since the dissolution of the concern, as per account annexed, - - - -	4,564 39
	$45,731 04
By amount collected from the debts due to the old concern, as per schedule B, in answer of C. McIntire, - - - - - -	28,441 52
Ditto, as per supplement to the same, - -	1,114 50
Ditto, as per supplement C, (less the amount received on account of assigns of John Tanner, as belonging to them and credited on that account, -	315 29
By balance, - - - - - - -	15,859 73
	45,731 04

Exhibit B.

The assigned estate of John Tanner in account with the old concern of C. Kelsey & Co., in which A. M. Hobby was a partner.

1822.			
Feb'ry 9th.	To balance due this day, as per schedule and settlement, on the dissolution of the concern, - - - -		$1,037 37
	Interest to 9th April, 1839, - -		1,424 65
	To this amount, paid Planter's Bank due as endorsers on J. Tanner's paper at the time of the dissolution, but not included in the said settlement, -		1,857 21
	Interest on the same to 9th April, -		2,550 90
			$6,870 13

Cr.

1831.			
January.	By this amount received from the assets of Thomas Tanner, assigned by John Tanner, -	$1,839 00	
	Interest on the same to this date, - - -	916 74	
			2,305 74
	Balance due, - - - -		$4,564 39

April 9th, 1839.

No. 34. *Testimony of J. McKinne.*

The circuit court met according to adjournment. Present his honor J. U. Wayne.

HOBBY & BOND
vs.
KELSEY & MCINTIRE.

Examination of J. McKinne, 2d May, 1839.

May 2d, 1839. In Court.

John McKinne sworn, confirms the statement of the dissolution of the co-partnership of J. McK. & H. Schulz. The ledger produced is that of McKinne & Co's; no such firm as J. McK. Did not carry on business as J. McK. after the dissolution, merely corresponded as an individual relative to the concerns.

The account between J. McK. and Kelsey & Co., shown to wit: recollects dft. in favor of Wommack—thinks it was not drawn on individual account, but on account of Bridge Co. Account correct, except calculation of interest. Receipt produced; 'tis witnesses' signature. With K. & Co. witnesses' transactions were confined to the interest of the Bridge Co., so derived from the books. The books of the Bridge Co. have been long since taken from witnesses' possession; have not seen them for a long time. Witness recollects the debt of Gardner; the bills he means do not appear in the books of B. McK.; that was a transaction between McDonald & Pope, this may account for its not being found in books.

Account with Gardner exhibited to witness; has no recollection of it; distinctly recollects Beck's mortgage, which witness thinks he transferred to Gardner. Witness held this mortgage as his own; the debt was created with McK & Co. Witness possessed it as survivor. Witness had assumed the debts of McK & Co., retained the assets, and undertook to pay the debts.

Barna McK. took benefit of insolvent debtors' act January 22. Schedule was filed in clerk's office. Schedule called for. Not produced.

There were considerable transactions between K. & Co. and the Bridge Co., in Bridge Co's notes. The account was not kept by witness, but by the cashier, C. Hansel; cannot recognize any debt between K. & Co. and McK & Co. Does not recollect as to the $1,699; knows nothing; no doubt the account (original as offered) is correct, except the error alluded to before; cannot from memory identify the paper (the said account) shown to him, as the paper upon which the settlement was made; presumes the receipt was given as closing the transactions between K. & Co. and Bridge Co. The account was fully paid. Witness has a receipt of the same date with his (the one produced) cannot distinctly state, how account was paid to K. & Co., having not the books.

1 May, '39. In Court.

Mr. Petigru stated (which was received as evidence) that the partnership of John McKinne & Henry Schultz, under the name of the Bridge Co. was formed 1 July, 1816. Schultz conveyed all his interest in the Bridge Co. to Barna McKinne and retired from the concern 21st April, 1818, which was announced 10th February, 1819.

No. 35. *Letter from McIntire to Hobby.*

CHARLESTON, *Nov.* 21, 1828.

My Dear Sir: Your letter of 9th inst., came duly to hand. The situation in which you are placed is certainly a very unpleasant one, and I regret exceedingly to say, that I cannnot at present encourage you to expect any aid from the old concern.

At the time of our dissolution, the ascertained debts due by us a little exceeded $26,000; to this add a note to S. Marsh & Brooks, of New York (omitted by mistake) interest and principal about $1,300. We have also been obliged to pay on account Pott & McKinne, several sums of which I have not now a memorandum. All these debts we were obliged to pay, and we had a very hard struggle to do it. Our list of debts receivable amounted to $38,000. Last December I made an estimate of receipts, and found them to be $24,666, very little if any thing has been collected since that time. Of the amount receivable, $2,260 are in Bridge bills, for which we are not likely to receive any thing. Upon looking over the list I think there is about $12,000 (including the Bridge bills,) for which we will never receive $1000. You at once perceive that the old concern has not yet discharged its contracts from its own assets, and consequently we have nothing to appropriate towards the bond.

I expected a very different result, and thought that Mr. Kelsey and myself would save about the same sum we were to allow you.

I expect Mr. Kelsey out here very soon. I will consult with him, and if you can make any use of the paper due to the old concern, I am willing that your proportion should be placed at your disposal. We have the notes of T. M. Bradford, $2,009, and other paper of persons in your neighborhood.

After an interview with Mr. Kelsey, I will write to you.

Your friend,

CHARLES McINTIRE.

Mr. A. M. HOBBY.

No. 36. *Letter from McIntire to Bond.*

CHARLESTON, *Oct.* 19, 1829.

Mr. THOMAS P. BOND,

Dear Sir: Your letter of 7th instant came duly to hand. In answer to your communication I reply that the bond given to

Mr. Hobby by Mr. Kelsey and myself, obliged us to pay Mr. H. so much money whenever the debts of the said concern were discharged, and a sufficient sum collected from the amounts and notes then due to it. Unfortunately for all the parties concerned, the amount collected was not sufficient to discharge the debts. We paid the debts out of the profit of our business, carried on after the old concern was dissolved. There is a considerable amount of outstanding debts, some of them in judgment, but it is uncertain whether they will ever be collected. Mr. Hobby is certainly justly entitled to his proportion of the outstanding debts, and as one of the parties I am willing to place that proportion at his disposal. The Bridge bills are in suit, and he may have them at any time.

Very respectfully, yours,

CHARLES McINTIRE.

No. 37. *Letter from McIntire to Petigru.*

PHILADELPHIA, *July* 8, 1836.

JAMES L. PETIGRU, Esq.,

Dear Sir: Your favor of 1st instant is received, in which you call my attention to an order of court passed in 1830, in relation to a bill filed against me by A. M. Hobby.

To that order I made a prompt reply by furnishing a statement of the whole matter, and it is not my fault that nothing has been done in the case since that time. The bill, you will recollect was filed against me individually. I believe Mr. Kelsey never objected to the court, in which suit was brought, but as he resided in another State, he did not consider himself called upon to plead.

Neither Mr. Kelsey nor myself have ever cherished any unfriendly feelings towards Mr. Hobby, and therefore it requires no time, as you seem to think, to mollify resentments—he declined paying for the simple reason that he never collected the money, and the terms of the agreement as you will perceive, were that payment was to be made, when the money should be collected from the assets of the concern. We certainly expected a more favorable result, and it is our misfortune as well as Mr. Hobby's, that this expectation was not realized. The Bridge bills were always held subject to the order of Mr. Hobby, and were never asked for, until the business was put into your hands. We have never received a dollar on them, and all that is to be realized, is still in the hands of the officer of the court in Edgefield district. It could not be reasonably expected that Mr. Kelsey or myself would accede to the terms you propose. Although we may have been more fortunate in business than Mr. Hobby, it has not been owing to any benefit derived from the assets of that concern.

I always have been, and still am prepared to settle on equitable terms.

I will send your letter to Mr. Kelsey, and after I hear from him, will again write you.

Very respectfully,
CHARLES McINTIRE.

No. 38.

Letter from Hale & Bulloch, to Petigru.

AUGUSTA, 25 *April*, 1839.

DEAR SIR: I duly received your letter of 22 instant, I have made inquiry respecting the price of Bridge bills in the year you name, 1822, 3, 4 and 5, and find that sales were made at various rates, from 15 to 25 cents in the dollar, they were sold about the time I purchased the ten for the bank, at 10 cents in the dollar—I find I have a parcel, for while negotiating for others, I did not manage well for myself—will the bills be of any use.

I hope to settle the claim against me without further trouble to my friend. I am much obliged for your interest in my affairs.

Respectfully yours, obedient servant.
SAMUEL HALE.

J. L. PETIGRU Esq.

I think the above representation of Mr. Hale as to the value of Bridge bills at the period, stated to be correct. He had an important agency at Augusta for the Bank of Georgia, about the time of the purchase of the Bridge, and I should consider his testimony entitled to full credence from the means of information, so amply within his power.

W. B. BULLOCH.

CHARLESTON, 27 April, 1839.

No. 39.

Letters from J. McKinne to Kelsey & Co., No. 1 to No. 14.

No. 1.

AUGUSTA, *January 5th*, 1819.

DEAR SIRS: On the 9-12th instant, we owe Mr. Tanner $10,000, which we wish positively to pay, without giving him any trouble, and as times here are really hard, we must beg you to devise some plan to raise the amount by passing drafts on us, James Harrison, or Merriwether, Beal & Co., perhaps a part on each might answer. At any rate we shall expect, should Lamkin have made no arrangements to do so, that you take up the draft, if even you have to borrow the amount, which we positively will send you by first stage after we are informed of it. Don't fail to see Mr. Tanner at once, and take from his mind all cause of doubt, and reply to this.

Truly yours,
J. McKINNE & CO.

No. 2.

AUGUSTA, *April* 3*d*, 1819.

DEAR SIRS: The banks having come to the determination of not on any account accommodating the proprietors of the Bridge Bank, reduces me to the necessity of most earnestly asking that you will endeavor to draw on me, and send the money at once, so as to enable me to meet some drafts on me, from your place and New York. Wishing not for the present to call on S. & McK., for further aid, induces me thus to trouble you. Ask Mr. Gardner to endorse on my account for $12,000, or even $15,000, and I pledge myself to place him in funds, or rather hold him harmless for doing so.

Truly yours,
J. McKINNE.

AUGUSTA, *April* 10, 1819.

DEAR SIRS: By last mail I received the proceeds of your draft on McKinne & Co., of six thousand five hundred dollars, which draft when at maturity shall be paid without damage or recourse on you. Be pleased to accept my thanks for your obliging disposition and believe me.

Truly your friend,
JOHN McKINNE.

AUGUSTA, *May 25th*, 1819.

DEAR SIRS: Since your Mr. Hobby left this, nothing very material has happened more than a steady, though as yet not alarming pressure on the Bridge Bank. And was it not for drafts on Mc Kinne & Co., and myself for other peoples accounts, all would progress tolerably well. I have only to solicit you to draw again at least for a part of what you had previously done for my accommodation, and send the money. You will also oblige me by at once furnishing mine and McK & Co's account, as that concern is closed, and I wish to settle it. With real truth, I remain.

Your obliged friend,
JOHN McKINNE.

AUGUSTA, *May* 18*th*, 1819.

DEAR SIR: Although I acknowledge myself a very unprofitable correspondent, I am, nevertheless, compelled to again remind you that your drafts on me fall due. 24–27 for $10,000, and 22–25 for $5,000; for which, at least in part, you may redraw, and send the funds, for, really, so desperately have I been pressed at the Bridge bank yesterday and to-day, that I cannot meet these drafts without paying specie. I must, therefore, most earnestly solicit you not to forget these papers; for although for my benefit, yet you must aid me out of this difficulty until the alarm is over, when all will again be well. These papers are only to be drawn as renewals, no money to be sent, and may, therefore, pass.

Truly yours,
J. McKINNE.

Why did not Mr. Hobby write me about the specie, and send the paper. Should Mr. B. McK. be in Savannah, Mr. Hobby will oblige J. McK. by saying he does not write, as it is uncertain whether B. McK. would be there.

AUGUSTA, *June* 1*st*, 1819.

DEAR SIRS: By last evening's mail, I had the pleasure of receiving a few lines from Mr. Hobby; and as it is probable he may have gone to Darien, I will only tell you that, should Mr. Gardner ask you for security of any kind, or on any account whatever, don't humour him; let him fret as much as he pleases, and regard him not. I am happy to tell you we are getting on much better than I expected: Bridge bills are good current money, for which I owe you, and other kind friends, many thousands of thanks. My heart is warmly sensible of what I owe you all, and when I omit to act gratefully as I ought, I shall no longer be worthy of being styled

Your obliged friend,
J. McKINNE.

AUGUSTA, *June* 3*d*, 1819.

DEAR SIRS: Since last I had this pleasure, I have nothing of consequence to tell you, more than again pleading poverty, which is a tale I have of late so often told you, that I am aware it must be a stale one. I hope, however, not always to be thus pressed, and, when again clear, it will allow me an opportunity of showing how truly I feel myself indebted to you.

On the 8–11 June for your draft, $6,500, and three days thereafter, $6,000 more, both drawn through the United States Bank, (as I believe,) and I am compelled to ask you once more to draw, deducting one thousand dollars on each, (which I must pay,) and forward me the proceeds. This I would not ask, but it is impossible to avoid it, as, by late unfortunate events, I now receive nothing but Bridge bills; and as they are not bankable, I am truly pressed to get along. Mr. Gardner is on both these drafts, and must go on them again, or the truth (painful as it is) must be told —they will return. The banks afford no relief, money cannot be coined, or out of $1,200,000 worth of property now set apart for the redemption of $265,000 Bridge bills, and $120,000 of other debts, surely I might raise 20 to $25,000 more, which would be quite as much as I want for the coming summer. This, however, I cannot do; and the banks must indulge you on my account, by making the deductions I have just mentioned.

With you, there is some liberality, but here we enjoy nothing of the kind. Be pleased to give this your best attention, as it is a fact I cannot get along without it; and believe me most gratefully

Your obliged,
J. McKINNE.

AUGUSTA, *June 29th*, 1819.

DEAR SIRS: Yours of the 24th, reached me only this morning. Had I thought Barna and myself both were wanting in Savannah, I would have went; but as I was an entire stranger to all the transactions, I did not suppose, when Barna went, I could do you, him, or others, any good.

These monstrous times have, at last, produced an effect I have struggled hard to prevent: though bad, it might be worse; for I fear not but yet we shall get out of the present times with flying colors. I yet retain a good conscience, large property, clear head, but no money. Dumming, Scarborough, and yourselves, I fear, will suffer by me. I regret, but cannot avoid it, at least for the present. I do not write Barna under the expectation that he may be off; should he be with you, tell him Tanner is hard, and offers to take Bridge bills, and if he (Barna) can get that kind of money, he had better do so; tell him, also, to bring up the Tennessee notes at all events, if not more. He must tell me which of his negroes are to be sold—don't forget this; also, be sure to send Kitty by the stage, so as to have her here on Monday next.

Truly yours,
J. McKINNE.

AUGUSTA, *July 17th*, 1819.

DEAR SIRS: It is again my painful duty to tell you that your draft on me for account of McKinne & Co., for $10,000, will be due 21–24, and that it is really out of my power to pay it. These monstrous times are beyond my control, and unless it can be redrew for, what will be its fate, I dread to tell you. Should the banks be alarmed, the most ample collateral security will be given, which is all at present I can do. I grieve greatly at this business, and assure you, was it in my power to prevent it, I would do it at any cost. Mr. Hobby must not forget the steamboat stock.

Your obliged,
J. McKINNE.

No. 10.

AUGUSTA, *July* 22, 1819.

DEAR SIR: Mr. Gardner has sent to his agent a paper to meet the $10,000 draft, due 24th; please see him and have it attended to. We are yet pressed, but if possible to get on with this, and the $12,500 next month I shall do tolerably well.

When does Mr. Hobby talk of coming up.

Yours,
J. McKINNE.

Why did not Mr. Hobby write me about the specie, and send the paper. Should Mr. B. McK. be in Savannah, Mr. Hobby will oblige J. McK. by saying he does not write, as it is uncertain whether B. McK. would be there.

AUGUSTA, *June 1st*, 1819.

DEAR SIRS: By last evening's mail, I had the pleasure of receiving a few lines from Mr. Hobby; and as it is probable he may have gone to Darien, I will only tell you that, should Mr. Gardner ask you for security of any kind, or on any account whatever, don't humour him; let him fret as much as he pleases, and regard him not. I am happy to tell you we are getting on much better than I expected: Bridge bills are good current money, for which I owe you, and other kind friends, many thousands of thanks. My heart is warmly sensible of what I owe you all, and when I omit to act gratefully as I ought, I shall no longer be worthy of being styled

Your obliged friend,
J. McKINNE.

AUGUSTA, *June 3d*, 1819.

DEAR SIRS: Since last I had this pleasure, I have nothing of consequence to tell you, more than again pleading poverty, which is a tale I have of late so often told you, that I am aware it must be a stale one. I hope, however, not always to be thus pressed, and, when again clear, it will allow me an opportunity of showing how truly I feel myself indebted to you.

On the 8–11 June for your draft, $6,500, and three days thereafter, $6,000 more, both drawn through the United States Bank, (as I believe,) and I am compelled to ask you once more to draw, deducting one thousand dollars on each, (which I must pay,) and forward me the proceeds. This I would not ask, but it is impossible to avoid it, as, by late unfortunate events, I now receive nothing but Bridge bills; and as they are not bankable, I am truly pressed to get along. Mr. Gardner is on both these drafts, and must go on them again, or the truth (painful as it is) must be told —they will return. The banks afford no relief, money cannot be coined, or out of $1,200,000 worth of property now set apart for the redemption of $265,000 Bridge bills, and $120,000 of other debts, surely I might raise 20 to $25,000 more, which would be quite as much as I want for the coming summer. This, however, I cannot do; and the banks must indulge you on my account, by making the deductions I have just mentioned.

With you, there is some liberality, but here we enjoy nothing of the kind. Be pleased to give this your best attention, as it is a fact I cannot get along without it; and believe me most gratefully

Your obliged,
J. McKINNE.

AUGUSTA, *June 29th*, 1819.

DEAR SIRS: Yours of the 24th, reached me only this morning. Had I thought Barna and myself both were wanting in Savannah, I would have went; but as I was an entire stranger to all the transactions, I did not suppose, when Barna went, I could do you, him, or others, any good.

These monstrous times have, at last, produced an effect I have struggled hard to prevent: though bad, it might be worse; for I fear not but yet we shall get out of the present times with flying colors. I yet retain a good conscience, large property, clear head, but no money. Dumming, Scarborough, and yourselves, I fear, will suffer by me. I regret, but cannot avoid it, at least for the present. I do not write Barna under the expectation that he may be off; should he be with you, tell him Tanner is hard, and offers to take Bridge bills, and if he (Barna) can get that kind of money, he had better do so; tell him, also, to bring up the Tennessee notes at all events, if not more. He must tell me which of his negroes are to be sold—don't forget this; also, be sure to send Kitty by the stage, so as to have her here on Monday next.

Truly yours,
J. McKINNE.

AUGUSTA, *July 17th*, 1819.

DEAR SIRS: It is again my painful duty to tell you that your draft on me for account of McKinne & Co., for $10,000, will be due 21–24, and that it is really out of my power to pay it. These monstrous times are beyond my control, and unless it can be redrew for, what will be its fate, I dread to tell you. Should the banks be alarmed, the most ample collateral security will be given, which is all at present I can do. I grieve greatly at this business, and assure you, was it in my power to prevent it, I would do it at any cost. Mr. Hobby must not forget the steamboat stock.

Your obliged,
J. McKINNE.

No. 10.

AUGUSTA, *July* 22, 1819.

DEAR SIR: Mr. Gardner has sent to his agent a paper to meet the $10,000 draft, due 24th; please see him and have it attended to. We are yet pressed, but if possible to get on with this, and the $12,500 next month I shall do tolerably well.

When does Mr. Hobby talk of coming up.

Yours,
J. McKINNE.

No. 11.

AUGUSTA, *November* 27, 1819.

DEAR SIRS: Yours of the 23d is received, and I assure you no person can more sensibly feel for the very disagreeable situation in which you are placed than I do, and was it in my power to prevent it, I would most cheerfully do it. Should the arrangements I have made with Mr. Scarborough not be thwarted, I yet hope for better times, though at present I am unable to promise positively any thing better than the most positive good collateral security for your drafts on me. But of this you may be assured, that nothing that I can do, shall be wanting for your aid. I most willingly give you such a letter for Phelps as you wish, and remain with real regard.

Your friend.

J. McKINNE.

As the note written over my name, would not answer send it back.

No. 12.

AUGUSTA, *December* 4, 1819.

DEAR SIRS: Finding it impossible to take up your drafts on me, and wishing by every means in my power, to avert from you the difficulties that await their remaining unpaid, I have thought the bank might be prevailed on to reinstate the papers as notes or drafts, on my placing as collateral security a country note for $25,000; the payment of which is secured by the mortgage of 35 negroes, and a tract of land for which $10,000 can at any time be had, and at each renewal after the present, I will pledge myself to reduce the paper 10 per cent. on the present amount, until it be paid, and farther will I assure the directors, that even faster than that, will I pay it if possible. Should this be agreed to, I will at once send a power of attorney to sign my name, and the note, which I most truly hope may be the case. Were the drafts in any other of the banks, and had been discounted, no difficulty would arise in its being continued on these terms. And if they are granted, I will as certainly as I live comply with my promises. Do me the favor of exerting yourselves to get it done on Tuesday next, agreeing to let the notes or drafts be renewed from the time the others were due. Mr. Scarborough I know, will aid you in this as much as he can, but as to Mr. Gardner I can say nothing.

I shall impatiently wait your reply, and if the collateral offer does not suit, I will give others of unquestionable goodness.

Your friend,

J. McKINNE.

No. 13.

AUGUSTA, *December* 14, 1819.

DEAR SIRS: Is there no chance of prevailing on the bank to restore the drafts, on being paid 10 per cent. on the last renewal, and engaging to continue reducing as I before wrote, on receiving the security then spoken of; I sensibly feel your situation, and am willing to do any thing in my power to relieve you. Should the bank continue its obstinacy I really know not what I shall do, only to say no other institution would do so. And I feel confident Mr. Gardner could, if he would, have it done, especially as the reductions would begin from the past instead of future renewals. If Mr. Kelsey will see, and converse with Mr. G. on the subject, I think it might be brought about, will you write me particularly on this subject.

Yours truly,

J. McKINNE.

No. 14.

AUGUSTA *January* 25, 1820.

DEAR SIRS: My inquiry relative to Martin Kalb, leads to the conclusion that he is very safe, for I well know that he owed Ervin G. & Co., a large amount, Mr. Hagraves says he is a good man but is sorely pressed. As to Bowen I cannot find any person who knows him; James Ervin can tell you perhaps better than any person here, as to his honor I would (after Bradie's business) not give a stiver. Make my respects to Ervin, and say he ought to come up, for there is a very wide and I fear angry space, to be filled by his presence. And if I get not the money by the 4th next month, I fear all is gone.

Yours truly,

J. McKINNE.

Will you be good enough to call on Mr. Gardner, and tell him it is all important that he should send by return mail, the note Lamkin gave him as collateral security, for as this day week is return day in Putnam county, if the note is not sent, a term in bringing suit will be lost, which will be truly a misfortune. And I pledge my word that as soon as the lawyers receipt is obtained it shall be sent Mr. Gardner, or any other paper given he may ask for, until said receipt is delivered to him; fail not in this, for at any rate, an express will have to be sent so as to have the paper there in time.

J. McK.

Please ask Mr. Gardner to send the note by some private hand and request him to deliver it on Saturday evening, as I must be off on Sunday morning, I written Mr. Gardner on the subject.

No. 40.

Testimony of Dr. Taylor and G. H. Kelsey.

Meeting at Clerk's house, Laurens street,
Saturday, 13th April, 1839.

Dr. James W. Taylor (Orangeburg) sworn. Was in the employ of C. K. & Co. from early '19 to early 1822, as clerk; attended to sales and keeping accounts; books in his charge for some time; recollects was present when the dissolution of copartnership took place; was witness to the signatures of the parties, 9th February, 1822, H. K. & McI., and signed as witness. Paper shown to him, statement of debits and credits, recognizes it as the paper shown to him at the time of the settlement; no objections were made to it; purports to be the original of which Exhibit A is a copy. Has seen the correspondence between the firm and McKinne & Co.; has seen him, J. McK, write; believes the letters produced are his writing—Jan. 5, '19, No. 1, backed by S. Reynolds, the clerk of K & Co, who was there when he went; No. 2, April 3, '19, backed by S. Reynolds; No. 3, April 10, '19, backed by witness; No. 4, May 15, '19, also backed by witness; No. 5, May 18, '19, also backed by witness; No. 6, June 1st, '19, also backed by witness; do. No. 7, June 3, '19; No. 8, June 29, '19; No. 9, July 17, '19; No. 10, July 22d, '19; No. 11, 27th Nov. '19; No. 12, Dec. 4, '19; No. 13, Dec. 14, '19; No. 14, Jan. 25, '20. The notes in pencil in Hobby's handwriting. From letter book K & Co. and to J. McK. Letter 22d February, '20, in handwriting of witness. The balance of $1,699 02, was not paid prior to the settlement, if it had been, presumes he would have known it. Letter from A. M. Hobby to B. McKinne, 22 June, '20, machine copy proved by witness. If there had been payments made to B. McK. would probably have known it. Bridge bills therein alluded to were retained, as supposed, as an offset to any liability they may have incurred from McK & Co.; they were in the habit of retaining Bridge bills received from McK & Co. and sending them bankable money. Don't think that K & Co. derived any benefit from having the Bridge bills. The first and main cause which brought about failure of K & Co. was their liabilities for McK & Co. and their friends.

Difficult to come at exact value of goods; many of them valueless; large pro. had been on hand some time, and had been injured; would not have given as much; thinks $4,000 would have been a hard bargain. Rate of exchange in 1822–'23, between 4 to 6 per cent. Between '19 and '22, Kelsey & Co's credit was supported by S. Kneeland, considered wealthy man, credit as good as any man. J. McK. must have known this, lived in the same place, Augusta.

Terms of partnership, as understood, share equally. Don't know

what Mr. K. brought into concern; when witness went into the service believes Mr. Hobby was then a partner; don't know how much McI. brought into concern; was not there when concern was formed; don't know what Hobby brought.

K. & Co. failed, or their embarrassments commenced, witness thinks, last of '19 or first of '20; they stopped payment he believes; continued to pay with goods and sometimes with money when they realized debts. Thinks that the balance due McK. & Co. was not sent; if it had been, supposes he would have known it; can't recollect that they sent any money to any body, March, '20—22d June, '22; knows that Kelsey & Co. had Bridge bills; can't say positively what was done with them; supposes that K. & Co. owed McK. & Co. in '22.

Does the witness know the origin of the indebtedness from K. & Co. to McK. & Co.? Does not particularly; their transactions were various; does not know what the items consisted of the debt of 1,699 02, to J. McK. & Co.; thinks the large drafts referred to in the letter had no connexion with this amount. Debt to B. McK, $5,397? Same answer; don't know whether K. & Co. did or not pay the drafts; they were not settled when witness left the concern, which was about the beginning of '22, the time or a little before the dissolution. Tanner failed in '20 or '21, perhaps the last of '19; T. went to Florida '21. Conversation was had with witness about dissolution and agreement. Witness believes Mr. McI. drew the agreement, wrote it out, and the schedule; he, Mr. McI. was as well acquainted with the value of goods as witness; ought to be; suppose is that the reason why the amount is fixed as stated to be paid to Hobby, was the expectation that that sum might have been realized as his proportion. Witness considered the concern insolvent; they might realize something from the property, and in collecting outstanding debts; this was his opinion; don't recollect that he communicated his private opinion to the partners; if they could pay their debts, it was as much as they could do. From their conversation with and among the partners, as well Hobby and the others, supposed that their impression was they would, after closing the concern, receive the proportion stated on the debts paid in N. Y., and presumes they paid such. They must have paid exchange. When they placed funds in N. Y., which he believes they did, they paid exchange. Don't know how they paid after the dissolution; he then left them. They did not ship much cotton; don't know that they drew; they remitted cotton, presumes to pay their debts; don't know that they were indebted to their factor to whom their cotton was sent; don't know to whom the cotton contained in schedule was shipped.

Debt to U. S. Bank, believes was on account of drafts of J. McK., alluded to in the correspondence. See the letter 29th Feb. '20, from K. & Co. to J. McK.

Offered Judge Berrien's acknowledgment of receipt of $900 for

professional services to concern, due before dissolution, paid afterwards, not included among the debts of the concern.

Don't recollect seeing any entries in the books of any advance by Hobby to the concern. Don't think the concern drew on N.Y. for cotton shipped, remitted to their creditors; don't think they were in the habit of purchasing cotton to ship; when shipped, it was as remittance. Believes the universal rule was to take cotton from debtors at an advance; can't tell whether the cotton included in schedule realized the amount which it is charged.

G. H. Kelsey—charge of $153, against A. Hobby individually, due to new concern of C. K. & Co., in which H. was not interested; has in possession a balance sheet taken from the books of new concern; the books were burnt; has had the balance sheet in possession all the time or a memorandum of balances; recollects it is an original entry in the books. His idea is that the price given for cotton is increased in reference to premium or rate of exchange. Proved debt paid on Tanner's draft to bank, $1,837 21, new debt, not charged in schedule.

No. 40.

Letters referred to in Testimony.

SAVANNAH, 22*d February*, 1820.

JOHN MCKINNE, Esq.,

Dear Sir: Your favors of the 17th and 19th inst. came duly to hand. Agreeably to your request, we shall pay Mr. Williamson the balance due on the wine, and ship it to you. We send you by Mr. Westfelt, two thousand three hundred and five dollars in Bridge bills, the balance due you as per account enclosed. You will observe that the present account embraces a complete statement of all our transactions from the time of the first draft we drew on you to the present day, as did the other accounts we rendered, as far as they went. The balance due Messrs. McKinne & Co., say $1,699 02, we will send by the next mail, with an account current with them; the balance of the Bridge bills on hand at present about $5,000. We will have Mr. B. McKinne's account ex'd, and make out a complete statement of the whole from the commencement. If we could possibly pay Mr. Hill the $108 you request, without disappointing those whom we have pledged ourselves to pay, we would do so with a great deal of pleasure; but such is the pressure for money with us that we have to calculate very close, so much so that even that sum is as important to us now as five thousand was twelve months ago. Your friend,

C. K. & CO.

SAVANNAH, 22d *June*, 1820.

B. McKinne, Esq.,

Dear Uncle: I would have forwarded your account by last mail, but it was not quite finished; you have it now enclosed, by which you will see to your credit $5,191 75, for which amount we have Bridge bills sufficient to meet. Morrison informs me that Williford promises payment in the ensuing week, but for my own part I think it doubtful, as he will scarcely tell an intentional truth. Could I find any property, I would order an instant execution, but it is all conveyed, and to send him to gaol is only to throw the money away, as he then would be sure to hold no property hereafter. From the enclosed letter, from Mr. Harford, you can judge if it is necessary to go to Darien; if you think an attempt should be made, I am ready at any moment. Catharine and myself will leave this early next month.

Your affectionate nephew,

Signed A. M. HOBBY.

No. 40. *Schedule referred to in the Testimony.*

SCHEDULE.

Notes receivable, and Book Accounts due C. Kelsey & Co.

Billup & Rainy, due Dec. 16, 1818	$1,119 73	
Rec'd on account	225 00	
		$894 73
H. W. Really's 2 notes, 1 due Oct. 1, 1819	410 00	
1 due Nov. 13, do	930 65	
	1,340 65	
Rec'd on account	193 34	
	1,147 31	
Received in payment house and lot and small notes, from which we will probably realize - - -		700 00
Ransom Wonill, balance due on note -		600 00
J. Saltonstall and J. Foster, balance due	1,008 00	
Probable amount to receive		400 00
Hunter & Border, balance on note -	755 15	
Probable amount to be rec'd		500 00
James Furze, balance due on notes and interest - - - -		975 43
J. & L. Tison, balance due on notes -	732 44	
Received in payment a lot of land, worth probably - - - -		150 00
J. & O. D. Watson's note - -		234 04
Farquar & Coleman's note, balance -		648 97

Morgan & Varnum, due Feb. 13, 1820 -	1,320 57	
Interest $1,504 30, and	202 40	
		1,522 97
Ballard & Ruslin, balance due - -	491 82	
Interest - -	108 60	
		600 42
Wm. Banan's note, due 27th Dec. 1820 -	986 76	
Interest - -	78 88	
		1,068 64
Watts, Bandy & Co., due Dec. 25, 1826 -	344 33	
Interest - -	27 52	
		371 85
Tate & Verdit, balance on note - -		453 00
Roger McKinne, note - - -	1,010 29	
Interest -	67 33	
		1,077 62
F. & O. D. Watson's note - -		379 55
Tandy D. King, due 25th Dec., 1821 -		261 50
Braswell & Blow - - -		250 00
Peter V. Gray - - - -		100 00
C. C. Webb - - - -		45 00
Isaac Harvey - - - -		35 00
Lucy Thomas, balance due - -		250 00
Balance due on notes in H. Parish's hands		144 13
Do do do J. B. Green's -		276 18
F. M. Bradford's 3 notes - -		2,009 71
Balance on Jos. George's note - -		484 00
S. Perry's note - - - -		736 58
Elias Beall - - - -		140 75
Peter Davis - - - -		184 28
		$15,491 47
Brooks & King - - - -	493 77	
R. Beasly - - - -	290 95	
J. & J. Anderson - - -	383 47	
E. & H. Wood - - - -	109 15	
Wm. Godfrey - - - -	280 02	
Rees & Mangham - - -	424 46	
Chapman & Atkins - - -	229 67	
Vicker & Justice - - -	185 78	
A. Dubourgh - - - -	264 20	
H. C. Farqhuar - - - -	200 00	
Bevins & Darelly - - -	600 00	
S. & N. L. Sturges - - -	323 73	
J. Bates & J. Ellis - - -		63 00
J. W. Cannon, balance on note - -	281 62	
		4,066 82
		19,621 29

Isaac Norton	142 29	
R. Wayne	3 00	
Cannon & Fowler	512 89	
J. W. Cannon	56 99	
Thomas Gardner	198 66	
J. Dixon & Co.	10 00	
S. C. & J. Schenck	15 00	
G. A. Edwards	28 00	
J. Morrison	6 50	
S. Rockwell	73 75	
Wm. Holibrook	284 46	
Col. Tatnall	63 35	
Jos. George	61 93	
E. Coppe	9 18	
A. B. Fannin & Co.	28 13	
John McKinne	105 81	
J. D. Boldeman	94 75	
Henry W. Hills	13 00	
Estate of John Tanner	1,037 37	
Thos. B. Stubbs	26 36	
W. J. Hobby	92 60	
S. H. Stockin	39 75	
Ponyatt & Holland	9 00	
E. J. Courtenay	88 16	
N. & O. Legriel	54 57	
M. McAllister	98 85	
R. Beasly	18 00	
Elizabeth McMauren	66 87	
	3,239 22	
A. Blake	1 00	
W. J. Wray	83	
James Morrison	48 56	
Col. Tatnall	45 19	
Johnson & Hills	14 50	
	3,349 30	
Amount of notes		19,621 29
Amount book accounts		3,349 30
Goods on hand per inventory	5,599 37	
70 bales cotton, remitted to New York	3,400 00	
House and lot bought of Jos. George	2,500 00	
Negro boy, Marcus	500 00	
Horse and gig	200 00	
Bridge bills	2,260 00	
Wm. Stanton's due bill	65 00	
Cash on hand	670 00	
		15,194 37
		$38,164 96

Amount of debts due by C. Kelsey & Co.

John Tanner - - - - - -	324	61
J. Little & Co. - - - - -	43	39
Thaddeus Phelps & Co. - - - -	6,370	34
Johnson & Hills - - - - -	568	59
Barna McKinne - - - - -	5,397	75
Daniel W. Shine . - - - -	83	50
J. B. Herbert & Co. - - - -	47	52
Haines, Johnson & Co. - - - -	2,706	48
McKinne & Co. - - - - -	1,699	00
Sharp & Tuttle - - - - -	1,096	89
R. Jaffray & Co. - - - - -	265	35
Anson Blake - - - - -	114	
State Bank - - - - - -	3,400	
Dft. in favor of Frankin & Mentern, interest added, -	232	08
Dft. in favor Dunham & Co. - - -	294	88
Dft. in favor S. Marsh & Brooks - - -	1,490	14
Balance due F. & H. Sheldon & Co. - -	1,923	39
	26,057	61

No. 41. *Order of Court.*

HOBBY & BOND
vs.
KELSEY & MCINTIRE. } In Equity.

Repeated examinations in detail of all the particulars in controversy between these parties, and much reflection have convinced me, that I ought not to make a final decree in this cause without giving to the complainants and the defendants a further opportunity to introduce evidence in relation to the item of 5,397 dollars 75 cents, claimed by the defendants to have been paid by them to Barna McKinne on account of the concern of C. Kelsey & Co. It was suggested at the close of the hearing of the case by counsel, I believe, on both sides, and the court indicated its acquiescence in the suggestion, that the item mentioned should be the subject of further proof. I had hoped however notwithstanding the suggestion, that it would not be necessary to delay the decision of the court on that account, but every examination since has served to impress upon me more strongly the correctness of such a course. It has too vital a bearing upon the interest and equities between these parties, for the court to undertake to admit or reject that sum as a payment, upon the present state of the testimony. Besides it seemed to the court in the progress of the trial, to be susceptible of further proof, and that there had been no laches on either side in not producing it. The case was ably argued and scrutinously examined by counsel, and was conducted by them in a spirit indicat-

ing a love of truth and justice highly honorable to them professionally, and which may always be exhibited consistently with professional duty to clients. It is not remarkable in such a case, that there should have been an omission to do all that could be done, in relation to a particular item, which turns out to be decisive to a considerable extent upon the controversy. The court therefore remits this cause for further proof upon the item said to have been paid to Barna McKinne by the defendants, with power to the parties respectively to take testimony by commissioners, or otherwise according to the usual proceeding in chancery. With power to the parties also to take other testimony in regard to any other item in controversy, which either of them may think susceptible of further proof, and for a final hearing of the cause at the ensuing term of the circuit court. In enlarging this order however beyond the item of payment to B. McKinne, it is right for the court to remark that the evidence in respect to every other item is sufficient for the court to make a decree, but the court thinks it right, as counsel may have a different view of some parts of the case, as they are now presented by the evidence, that the order should be so enlarged. As the cause then is not to be decided without giving an opportunity to the parties to introduce further testimony, and must be before the court again, I suggest to counsel that it would be very acceptable to me to hear an argument from them orally or otherwise, as may suit their convenience, upon the point whether according to the decisions in chancery any sum which may be found to be due by the defendants to the complainants, will carry interest under such a contract or agreement as was entered into by the parties, upon the dissolution of the co-partnership of C. K. & Co. I enclose for the use of counsel many authorities upon the point both at law and in equity, and hope they will find it useful in lessening the labor of investigation, though they are not in all cases classified, and are presented just as they were noted by me in the course of my investigation.

JAMES M. WAYNE,
Ass. Just. Sup. C. U. S.

July 1st, 1839.

No. 42. *Articles of Agreement upon the dissolution of C. Kelsey & Co.*

Articles of agreement entered into at the dissolution of the firm of C. Kelsey & Co. between Alfred M. Hobby of the first part and Charles Kelsey and Charles McIntyre of the second part.

Witnesseth that the said Alfred M. Hobby doth agree to withdraw from the said firm upon the following conditions, viz: that the said parties of the second part are to take upon themselves, the entire settlement of the business of said firm, and are to pay to the said Alfred M. Hobby, after the debts of the said firm are all paid and discharged, and a sufficient sum collected out of the debts now due

to the said firm, five thousand five hundred dollars, and in Bridge bills whenever he shall demand them, one thousand one hundred and thirty dollars. And the said Alfred M. Hobby for and in consideration of the above sums of money to be paid, and the further sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, hath relinquished and by these presents doth transfer to the said parties of the second part all his interest or claims of whatever nature he has, or may have as a partner in the said firm. It is also stipulated and agreed that the said A. M. Hobby of the first part, in consideration as above specified is to protect the said parties of the second part from a certain judgment obtained against said firm by the Branch of the United States Bank in this city, and to hold them harmless from any balance, should there be any due after the conclusion of the settlement between John McKinne and Thomas Gardner respecting the said judgment. And for the faithful discharge of this agreement, we bind ourselves, our heirs, executors, administrators or assigns.

Witness our hands and seals this ninth day of February, one thousand eight hundred aud twenty-two.

A. M. HOBBY. [L. S.]
CHAS. KELSEY. [L. S.]
CHAS. McINTIRE. [L. S.]

Signed and sealed in the presence of
JAMES W. TAYLOR.

The parties referred to in the foregoing bond, having adjusted a full and final settlement of the same it is hereby cancelled and declared to be null and void.

A. M. HOBBY. [L. S.]
C. KELSEY. [L. S.]

Witness.
GEO. H. KELSEY,
B. A. HEGEMAN.

NEW YORK, September 6th, 1839.

No. 43.

Account of C. Kelsey & Co. with the old concern of C. Kelsey & Co.

UNITED STATES, *South Carolina District,*
Being Sixth District, United States.

A. M. HOBBY & THOS. P. BOND,
vs.
CHAS. KELSEY & CHS. McINTIRE. } Now pending before said court.

In Chancery.

In this case the parties, Alfred M. Hobby and Charles Kelsey have come together and examined the subject matters in dispute,

and they find the within account correct and it is hereby admitted to be correct, and every entry in it. And they do not deem it just or equitable that said suit should be further prosecuted. And, in consideration of the premises and one dollar paid the parties in said suit, hereby discharge each other from all demand in the same. And each party releases and discharges the other from all demand of every name and nature, and agree that the said suit should be discontinued. As witness our hands and seals this sixth day of September, eighteen hundred and thirty-nine.

A. M. HOBBY. [L. S.]
C. KELSEY. [L. S.]

Witness to the signatures and seals of A. M. Hobby and C. Kelsey.

GEO. H. KELSEY.
B. A. HEGEMAN.

Account of C. Kelsey & C. McIntire, with the old concern of C. Kelsey & Co., in which A. M. Hobby was a partner.

Amount of debts owing by the firm of C. Kelsey & Co. as per schedule of 22d January, 1822, by which the settlement was made on the dissolution with A. M. Hobby, - -	26,057 61
Amount of debts owing by C. K. & Co. omitted in said schedule, and since paid by C. K. & C. McI.	2,817 05
Amount paid Davis & Berrien for defending suit of State Bank for endorsements for the McKinnes, as per their receipts and letter, - - -	900
Balance due T. Phelps & Co., not included in said schedule, and since paid by C. K. & C. McI. -	159 25
Exchange paid on debts due in New York, and there paid, amounting to $14,700 at 5 per cent. -	735
Loss sustained by discount on amount of money received in collections made of the debts due the concern, - - - - - -	788 23
Rent for counting room, as per estimate, - -	800 00
Travelling expenses incurred in collecting debts, -	500 00
Postage, - - - - - -	300 00
Clerk hire, - - - - - -	500 00
Expenses incurred in suit of T. H. Nichols for debt due to him, - - - - -	75
Commission on debts collected by us due to the firm $29,871 31 at 2½ per cent. - -	746 77
Commission on debts paid out $34,000 at 2½ per cent. - - - - - -	850 00
Attorney's fee paid Davis & Berrien in the case of D. Taylor, Jr. at the suit of executors of Thos. Gardner, - - - - -	300 00
Incidental expenses, - - - -	1,000 00

Commission on security for injunction in suit of executors of T. Gardner $5,590 at 5 per cent. -		279 50
Damages in consequence of the levy in the above case, - - - - - - -		4,000
Amount due to new concern of C. Kelsey & Co. by A. M. Hobby in 1832, - - - -		153
Costs of suit on Bridge bills, paid D. Breithaupt, -		35
Balance due by the assigned estate of John Tanner accruing since the dissolution of the concern as per account annexed, - - - -		4,564 39
		45,560 80
By amount collected from the debts due to the old concern as per schedule B, in answer of McIntire, - - - - - - -		28,441 52
Ditto as per supplement to the same, - -		1,114 50
Ditto as per supplement C (less the amount received on account of assigns of John Tanner as belonging to them and credited in that account,) -		315 29
By balance, - - - -	$15,689 49	
Paid Haines, Johnson & Co. over and above the amount specified in schedule - - - - -	170 24	
		15,839 73
		$45,560 80

Balance as above fifteen thousand eight hundred and fifty-nine dollars 73 cents.

C. KELSEY,
A. M. HOBBY.

September 6th, 1839.

No. 44.

Letter from Hobby to Petigru and Pettigru's Answer.

New York, 6th Sept., 1839.

J. L. Petigru, Esq.

Dear Sir: Mr. Kelsey and myself having had a settlement of our accounts, you will therefore be pleased to discontinue proceedings in the case of Bond and myself against Mr. Kelsey and Mr. McIntire.

Yours respectfully,
A. M. HOBBY.

CHARLESTON, 10 Sept. 1839.

Sir: Your letter directed to our senior partner, dated 6 instant, informs us, that you and Mr. Kelsey having had a settlement of your accounts, desire proceedings to be discontinued. We desire to know what arrangements you have made for the paying the costs of the suit, and are

Your obdt. servants,
PETIGRU & LESESUE.

A. M. HOBBY, Esq.
New York.

No. 45.

Affidavit of C. Kelsey.

CIRCUIT COURT OF THE UNITED STATES,
South Carolina, District being the 6th District of the United States.

A. M. HOBBY & THOMAS P. BOND
vs.
CHS. KELSEY & CHS. McINTIRE. } In Chancery.

Charles Kelsey of the city, county and State of New York, having been duly sworn deposeth and said in answer to certain objections, which he hath been informed by his counsel in said cause as set up against a certain settlement by him made in the said city of New York on the 6th of September last with said A. M. Hobby of a certain account drawn into controversy by the pleadings and proofs in said cause: which objections to said settlement this deponent is informed by his counsel, consist of allegations that said A. M. Hobby, was by fraud or force or both compelled to make said settlement, and did not do it freely and voluntarily and understandingly: that this deponent saith, that in August last in consequence of advice from his counsel in Charleston as to the probable views of said court upon some of the items of the account of himself and said McIntire, presented in said cause, and instructions as to further evidence in said cause, this deponent applied to counsel in the city of New York, and exhibited the bill and answers in said cause, the account of the respondents in controversy, with the letter received from his counsel in Charleston. Also the covenant or agreement with said Hobby dated the 9th February 1822, a copy of which is annexed, and requested an opinion whether the damages sustained by a breach of said covenant and charged in said account could be brought in and shewn before said court as matter of set-off, or compensation: and also as to certain proofs spoken of in the letter from his said counsel at Charleston concerning other items in the respondents accounts, and the opinion and advice by this deponent received from his said

counsel in the city of New York, was that said court sitting as a court of equity, could not and would not settle the damages for the breaches of said covenant if the same should be proved; and that the same must be settled in an action of covenant upon suit brought in some court of law, and that as to the proof concerning other matters spoken of by his counsel at Charleston if obtained, would be of little importance, and that after such a lapse of time, and so many deaths, it would be very difficult to obtain proofs that would be of much avail — that these opinions were obtained before this deponent had any intimation that said A. M. Hoboy intended to come to New York, or knew that he was here.—That on the 27th day of August last this deponent was informed that said A. M. Hobby was in the city of New York, and immediately applied to counsel and laid before him said bill and answers, the letter from his counsel at Charleston concerning further proofs, and stating the views of the court so far as known and expressed and also the covenant, a copy of which is herewith annexed, with a statement of what had been done under the same in violation of it, which breaches of said covenant are more fully set forth in an affidavit made by this defendant, when cited by said Hobby to shew cause of action and shew reason why the bail should not be mitigated. A copy of which as near as can be read from the draft now in deponents hands is hereunto annexed, that this deponent was informed by his counsel that for the breaches aforesaid of said covenant this deponent and his said partner Charles McIntire could sustain an action at law for covenant broken, and this deponent directed a suit accordingly—that on the 28th day of Augnst, as this deponent is informed by the attorney employed to issue the writ in said cause, a capias was issued against said Hobby returnable before the superior court for the city, county and State of New York upon an order to hold to bail for four thousand dollars, as this deponent hath been informed and believes—that upon said capias, the said Hobby was arrested, and immediately offered bail to the office, by a person wholly irresponsible, as the person himself admitted: but wishing to give said Hobby no unnecessary trouble, the officer was directed to take said bail.—That on the 30th day of August aforesaid said Hobby, cited the plaintiffs in the cause to shew cause of action and to shew reasons, why the bail should not be mitigated, that this doponent by his counsel appeared, and put in the affidavit, a copy of which is annexed, in answer to the affidavit of said Hobby, on which his application was founded that said Hobby appeared with one of the most eminent counsellors in the city, under whose advice this deponent hath been informed and believes said Hobby acted in all that relates to said suit and the settlement thereof—that the judges before whom the parties appeared, mitigated the bail to fifteen hundred dollars, but this defendant did not insist upon or require said Hobby to get other or better bail for that sum; and left him at large on such bail as it was convenient for him to procure—that soon after, and early in

September said Hobby came to the office of this deponent, and applied to this deponent to make a settlement of the suit, and all their matters in difference—that after several days consultation with his friends and his counsel as this deponent is informed and believes a settlement of all matters was made, and releases or discharges were executed—that in said settlement which did not take place till several days after the suit was commenced and not till the said Hobby had full time to consult his friends and counsel: and when made, it was made freely voluntarily and fairly and without any coercion on his part. — One great object in commencing said suit, was to liquidate the damages which had been sustained by the violation of said covenant, by a verdict of a jury, and then apply the same, as by law he might be enabled to do, and as he might be advised — and this deponent was advised to that until such damages had been so as aforesaid ascertained, he could not offset the same in any other suit. And this deponent further saith that said Hobby staid in said city of New York several days, but he cannot say how many, with a view of purchasing goods as he said, and called on this deponent as his friend and wished him to allow him in case he made purchases, to refer to the deponent for his standing and character in society, and appeared perfectly satisfied and friendly. And this deponent further saith that if time is allowed him, and proper authority given him, he verily believes he can make proof of all the facts by him set forth in this affidavit—and further saith not.

New York, December 30th, 1839.

C. KELSEY.

SOUTHERN DISTRICT OF NEW YORK.

Be it remembered, that on this thirtieth day of December, one thousand eight hundred and thirty-nine, before me, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, second circuit, personally appeared the above deponent, Charles Kelsey, to me well known, and made oath that the statement of facts in the above deposition was true.

In testimony whereof I, Frederick J. Betts, clerk of the circuit court of the United States for the southern district
[L. S.] of New York, in the second circuit, have hereunto subscribed my name, and affixed the seal of the said circuit court, the day and year last above written.

FRED. J. BETTS, *Clerk.*

No. 46.

Affidavit of A. M. Hobby.

UNITED STATES, *South Carolina District,*
Being Sixth District United States.

In Chancery.

A. M. HOBBY & THOS. P. BOND
vs.
CHAS. KELSEY & CHAS. McINTIRE.
} Now pending before said Court.

In this case the parties, Alfred M. Hobby and Charles Kelsey, have come together and examined the subject matter in dispute. And they find the account, as rendered by C. Kelsey & C. McIntire, in their answers in said suit, correct, and it is hereby admitted to be correct, and every entry in it. And they do not deem it just or equitable that said suit should be further prosecuted, and in consideration of the premises, and one dollar paid the parties in said suit, hereby discharge each other from all demand of every name and nature, and agree that the said suit shall be discontinued. As witness our hands and seals, this sixth day of September, eighteen hundred and thirty-nine.

C. KELSEY, [L. S.]
A. M. HOBBY. [L. S.]

Witness to the signatures and seals of A. M. Hobby & C. Kelsey.
GEO. H. KELSEY,
B. A. HEGEMAN.

UNITED STATES, *Sixth Circuit.*

HOBBY
vs.
KELSEY.
} In Chancery.

Alfred McKinne Hobby, one of the plaintiffs in this case, deposeth and saith that about the 25th day of August last, he visited New York upon his private business, and on the 27th met Charles Kelsey, one of the defendants in this case, in the street. The meeting, on this deponent's part, was entirely accidental, and, apparently, perfectly friendly on both sides. That the said Charles Kelsey shook him heartily by the hand, and invited him into his counting-room; to which this deponent went with him, and entered into a friendly conversation on such topics as among friends are customarily addressed to new comers. That he inquired the object of this deponent's visit, and this deponent stated to him that he had lost his situation in bank, and was going to New Orleans, and had come to New York to buy goods. The said Kelsey, referring to this suit, asked deponent if he was not tired of that business; and this deponent told him he was so far tired of it, that he would like

to see it settled. The said Kelsey said he intended to have it settled; but this deponent then did not understand his meaning, and took leave in a friendly way, inviting the said Kelsey to see him at the Franklin House, where he was staying. The said Kelsey answered, in a tone which this deponent afterwards remembered, I shall come. That the next day, the 28th August, in the afternoon, this deponent was arrested by a bail writ, at the suit of Kelsey & McIntire, for four thousand dollars, on the same cause of action which is on issue in this case. That by the affidavit for the order for bail, the said Kelsey swore, as far as this deponent can recollect the terms, that this deponent was indebted to the plaintiffs in four thousand dollars, for damages sustained by them on account of deponent's failing to protect them against the execution of Thomas Gardner; or words to that effect. That deponent was greatly alarmed by the arrest, which was perfectly unexpected, as he had not supposed that, while the case was pending, he could be arrested by the defendants for the same matter. That he prevailed with the officer to go with him to the Astor House, to apply to his southern friends to procure bail. That Major Tannin agreed to be his bail, but the officer refused him because he was a non-resident. That he then applied to Nathaniel Lord, who excused himself from being bail till he saw Kelsey; that he saw Kelsey, and deponent went with him, accompanied by the officer, to Staples & Goddard, Kelsey's lawyers, and there some arrangement was made by Lord, in consequence of which the officer left this deponent, receiving his fee; and this deponent gave his word to Lord that he would not leave the city till he procured bail or was discharged. That on the 31st of August (as well as deponent can recollect the date) the case was brought before Judge Oakley, where Kelsey's affidavit was read, and the judge heard the statements of Goddard and Lord, on which the judge discharged the order for $4,000; but as Kelsey swore that Kelsey & Co. had paid Mr. Berrien $300, and claimed interest on it from 1825, the judge ordered this deponent to give bail in $1,500, double the amount of the debt. That this deponent then tried day after day among his southern friends to get bail or borrow money to pay the debt, but in vain. That in the meantime his mind was distracted by the thoughts of the distressed situation in which he had left his family, and the apprehension of the destruction of his hopes by being thrown into prison.

That N. Lord advised him to see Kelsey, telling him that Kelsey said that if they were to meet, it could be settled. Deponent very well knew that the only way he could settle with Kelsey, would be by giving him a receipt in full, and would not go near him, till he found that he had no alternative but to submit or to break his word with Lord and run away. That, rather than violate his honor, he gave way, and went to Kelsey's counting-house, and asked him what he wanted. That Kelsey stated, in substance, that he wanted this case settled, and was determined that it should be

settled; that he had this deponent in his power, and was determined to use this power; and after some pretences of demanding this deponent's notes for McIntire's benefit, as he stated that McIntire was poor, he concluded that he was willing to pass receipts. That this deponent submitted to the hard necessity that was laid upon him, and signed the foregoing paper as drawn by Kelsey and witnessed by G. H. Kelsey, who was the only person present at the interview, and by a clerk of Kelsey's who was present at the execution.

And this deponent avers that the statement contained in the said paper that the parties had examined the subject and found the accounts submitted by Kelsey to be correct, is false. That the said admission was extorted from this deponent against the settled conviction of his mind, and known by Kelsey to be false, and to be wrung from this deponent's fears excited by the terrors of a dungeon, and the dread of his family suffering from want, aggravated by the sickness of his wife. That at the direction of Kelsey this deponent wrote to his solicitor to discontiue the suit. That he believed that he had been sacrificed, and made no other communication to his solicitor 'till this day, when he is informed that the release extorted from him without consideration while a prisoner, is of no validity in this court, and that he is at liberty to prosecute this cause to a judgment and decree.

And he avers that the said defendants are, as he fully believes, justly indebted in the full amount of the condition of the obligation which is the cause of action in this case, and this deponent is entitled to the whole of the said amount, subject only to the lien of Mr. Bond for the expenses of this suit, and a small sum advanced to him by a friend on the security of the same. That he never received a cent from the defendants in satisfaction of his claim besides the sums which have been taken into consideration at the references in this case; and that the only consideration for his release was his discharge from a false and groundless action, as herein before mentioned.

A. M. HOBBY.

STATE OF GEORGIA, *Bibb County.*

Before me, Myron Bartlett, one of the justices of the inferior court of Bibb county, personally appeared A. M. Hobby, and made oath that the contents of the foregoing affidavit are just and true.

Sworn and subscribed before me this fourteenth day of November, 1839, at Macon, in the State of Georgia.

MYRON BARTLETT, *J. J. C.*

No. 47.

Affidavit of O. Gregorie.

Ossian Gregory of Macon, in the State of Georgia, merchant, deposes and says that about the first of September last, he was in New York and was sent for by A. M. Hobby, to whom he went, and found him in great distress, by reason of his being held to bail by Kelsey and Company, and understood that he was at large under a pledge to N. Lord until bail could be procured, and that he was held to bail with a view to extort a release from him. That this deponent felt interested for him, and determined to do all he could to relieve him; that he called upon Charles Kelsey and stated to him the great difficulty at this time of commercial embarrassments to obtain bail on account of the conscientious scruples of men immersed in business, to justify by taking an oath that they were worth so much clear of debt; but that if he would take such security as this deponent would procure for Hobby without justifying, this deponent could indemnify him by bond and mortgage to double the amount. That the said Kelsey parried the proposal by going into a long detail about the having been a partner with Hobby and having been grievously injured by him, and his determination to have it settled, and that he had a friendly feeling for Hobby, and wished only justice. That Hobby could get of the writ by withdrawing a certain suit and passing receipts; and in substance emphatically declared that the object of the writ was to force Hobby to terms, and that he would accept of nothing else, and did not think it worth while for Hobby to come and see him unless with that view. That this deponent effected nothing with him, and tried in vain in several instances to procure bail who would justify, and while he was still prosecuting his efforts, was taken sick and confined to the house, and when he recovered Hobby was gone.

OSSIAN GREGORY.

Filed 8th January, 1840.

No. 48.

Order of Court.

Wednesday, 8th January, 1840. Before his honor James M. Wayne, and his honor Robert B. Gilchrist.

HOBBY & BOND
vs.
KELSEY & MCINTIRE.

A motion having been made in this cause by the defendant's counsel for the dismission of the same on the ground that the par-

ties, complainant and defendant, since the last term of this court had met and fully satisfied all matters in controversy between them in the said cause; the complainant Hobby having given to the defendants a full release, but the same being impeached by the complainant's counsel, it is ordered that time be given to the parties to take testimony by deposition in regard to such settlement and release.

It is further ordered that the defendants do pay into the registry of this court on or before the first day of March ensuing, the sum of one thousand dollars, to abide the decision of this court with regard to costs which have accrued, and shall accrue in relation to the same, and it is further ordered that the cause be set down for a final hearing on the first day of the ensuing term of this court.

No. 49.

Motion to dismiss Bill.

Wednesday, 15th April, 1840. The circuit court met according to adjournment. Present his honor Robert B. Gilchrist.

HOBBY & BOND
vs.
KESEY & MCINTIRE.

The defendant's counsel moved that on the payment of the costs of the counsel of the complainants from the funds paid into court by the defendants and on the payment of all the other costs, the balance of the said fund be repaid to the defendants, and the complainants' bill be dismissed.

No. 50.

Testimony of N. Lord, B. A. Hageman, and S. P. Staples, by Commission.

THE UNITED STATES OF AMERICA, SIXTH CIRCUIT,
South Carolina District.

A. M. HOBBY and THOMAS P. BOND
vs.
CHARLES KELSEY and CHAS. MCINTIRE. } In Chancery.

Interrogations to be administered to Seth P. Staples, Nathaniel Lord, and Benjamin A. Hegeman, witnesses, resident in New York, to be produced, sworn, and examined, on the behalf of the defendants. And first

For Seth P. Staples, Esquire.

1. What is your profession, and how long have you been in it?
2. Were you or not, some last summer, and at what time,

consulted by Charles Kelsey, professionally, on the subject of a suit against him, in the circuit court of the United States in South Carolina, and what was the suit?

3. What papers and documents were then laid before you by Mr. Kelsey; and what was the point submitted to you on those papers, and what was your opinion thereon?

4. Did or did not Mr. Kelsey apply to you to commence an action Alfred M. Hobby, and what was the action? When did Mr. Kelsey apply to you; was it before or after you had given him your opinion or advice on the points which he had submitted to you on his case in South Carolina; and how long before or after?

5. What became of this suit; how was it conducted; was or not Mr. Hobby held to bail; who was his bail; did you make any objection to his bail; did or not you accept this bail, knowing that he could not justify; was there any thing harsh in the conduct of Charles Kelsey to A. M. Hobby?

6. Look at the copy of the affidavit hereunto annexed, marked A. Was or not the original affidavit, of which A is a copy, drawn by you for the said Charles Kelsey; are not the facts therein stated, with respect to the said suit against Hobby, correct? did you or not advise the said Charles Kelsey that he had a right to bring the said suit, notwithstanding the pendency of the suit in South Carolina?

7. Was Mr. Hobby ever imprisoned in the said suit; had he or not the benefit of counsel; who was his counsel; what is the standing of his counsel; did or not Mr. Hobby act by the advice of his counsel; might or not Mr. Hobby have left New York *have left New York* at any time after he had given bail?

8. Do you know any other matter or cause that may benefit the defendants, or either of them? Then state the same as fully as if thereupon specially interrogated.

Cross Interrogatories for Seth P. Staples, Esquire, a witness to be examined on the part of the defendants.

1. As Mr. Kelsey has produced you as a witness on his behalf, do you consider that he has waived, and has a right for himself and Mr. McIntire to waive the protection of a client; and do you consider yourself so absolved from the obligations of professional confidence as to be bound to answer all the questions which the complainants may choose to put, as frankly as if you had never been the solicitor or counsel of Mr. Kelsey, even if it should happen that such questions relate to matters communicated under the seal of professional confidence?

2. If the preceding question be answered affirmatively, have the goodness to say when Mr. Kelsey first consulted you about the case in the United States court of equity for South Carolina, Hobby vs. Kelsey, and particularly how long before the 28th August, 1839?

and produce the letter of his counsel which he refers to in the affidavit annexed to the interrogatories, if in your power to produce; if not in your power to produce, explain the contents as fully *as fully* as you can recollect them, and explain also the circumstances that prevent the production of the original.

3. Did Mr. Kelsey, at any time before the 28th August, 1839, or afterwards, submit to you abstracts or copies of the pleadings in Hobby vs. Kelsey? Did he, at your first interview, or at any subsequent time, put you in possession of abstracts or copies of Mr. Jervey's two reports, viz: report of November, 1838, and report of April, 1839; and the two orders of the Honorable James M. Wayne, viz: the order of 9th January, and the order of 1st July, 1839?

4. When Mr. Kelsey consulted you respecting the suit of Hobby vs. Kelsey, did he apply to you for advice respecting the probable result of the suit, or for professional services, as a solicitor, to prepare the case for trial? And dismissing all considerations of the confidence which has been waived, state frankly what advice you gave him, and what you did or recommended him to do.

5. When Mr. Kelsey consulted you about the said case of Hobby vs. Kelsey, did he apply to you because he was about to gain the suit; or was his application made to you because he was going to lose, or apprehended that he was going to lose the suit?

6. When did Mr. Kelsey apply to you to hold Hobby to bail? Did you, at that time, know what were the matters put in issue by the suit, Hobby vs. Kelsey, in the United States court? Did you know that it was a bill in equity, and that the object of it was to set up a certain agreement for dissolution of a partnership between Hobby, Kelsey & McIntire, carried on, before 9th February, 1822, under the name of C. Kelsey & Co.?

7. Did you know, when Mr. Kelsey applied to you to arrest Hobby, that Hobby had brought ten thousand dollars into the firm of C. Kelsey & Co., and carried nothing out; that he had transferred the whole subject to the other two partners, upon their agreement to pay him five thousand five hundred dollars out of the assets, after payment of the debts of the concern, and that the bill, Hobby vs. Kelsey, was filed to set up that agreement, and to have an account of assets?

8. Did you, when consulted by Mr. Kelsey, understand that, in the said suit of Hobby vs. Kelsey, the defendants had put in their answers, and relied upon a breach of the said agreement by Hobby in not protecting them against the judgment of the United States Bank, and had denied assets?

9. Did you know that, so far as the defendants could prove damages sustained by them on account of the judgment aforesaid, those damages had been allowed them in Mr. Jervey's reports; and that they had taken evidence to prove consequential damages, and had failed to prove themselves entitled to any? Did you know that the expenses which Kelsey & Co. were put to, by the levy under the judgment, had been actually allowed them in Mr. Jer-

vey's reports, viz: $300 paid to Mr. Berrien, and that they had proved no other expenses?

10. When you were consulted by Mr. Kelsey respecting the arresting of Hobby, what advice did you give him? Did you bring the action to recover damages sustained by Kelsey & Co. on account of money paid, or expenses incurred, in defending themselves against the judgment, or for special damages? and if so, state particularly what those special damages were.

11. Look at the papers hereto annexed, and say whether the paper which purports to be an affidavit of Charles Kelsey, is not a true copy of the affidavit which he made in answer to the rule to shew cause; and in whose handwriting the said copy is; and whether the order of Judge Oakley is not the original signed by himself; and say what you insisted on before the judge? Did you not insist, before Judge Oakley, that, even in case the other matters contained in that affidavit were insufficient, the sums which the said Kelsey had sworn to as having been actually paid to the amount of six hundred and fifty dollars, for fees and other law expenses, constituted sufficient cause of action to entitle him to an order for bail to that amount, and the interest thereof, and also to cover the costs of the action? Did the judge give his reasons for moderating the bail on making the order he did? On what ground was Hobby ordered to find bail in $1,500?

12. Did you give Mr. Kelsey any advice as to the particular result of his action at law, in case Hobby should recover a large sum in the United States court against him and McIntire? Did you give him any advice as to the result of his action in case the suit in equity should be tried first? Or did you take for granted that the action at law would be tried first? Or did you consider the question under the supposition that it would depend on circumstances whether the action at law would ever be tried?

13. Do you believe that you know what was Mr. Kelsey's object in commencing an action at law against Hobby? Will you say that his motives in bringing the action at law were not connected with the suit in the United states court?

14. Did you advise Mr. Kelsey to proceed as he did, or did you merely take his instructions to commence the action, and hold the defendant to bail? If you say that you recommended him to sue Hobby at law, upon the same agreement upon which Hobby was suing him in equity, what was the benefit or end that you expected to obtain by the action? And in answering the question, state your views under both aspects of the case? that is, what was to be gained by the action at law if Hobby should recover in equity all that he was likely to recover? And what was to be obtained by it in case Kelsey should succeed in equity, in obtain all he was contending for.

15. Do you believe that if Hobby had been a resident of New York city, and so not liable to be arrested for debt, the same inducement for bringing the action would have existed in the mind

of Mr. Kelsey? Do you believe that he would have thought it worth while to commence the action if Hobby had not been liable to arrest or had been able to find bail? State what your advice was as to the bringing of the action, and say whether you would have given the same advice if Hobby had been a resident of New York and the bill in equity had been in the district of New York instead of South Carolina?

16. From all that you know and have seen in this matter, what is your opinion as to the effect of the action at law which Kelsey brought against Hobby in New York? Do you think or believe that by that action a certain settlement or release made and executed between Hobby and Kelsey on the 6th September, 1839, was promoted? and will you say that the action was brought without any view or interest to the purpose that it actually served?

17. Have you ever seen the instrument dated 6th September, 1839, by which Hobby is made to acknowledge that an account of the assets of Kelsey & Co., showing a great balance against him, is just, and the parties mutually release all demands? Were you consulted about it? If so, when? How long before the day it bears date?

18. From all that you have seen and know and believe, concerning this matter, what is your opinion as to the cause of that settlement? Do you truly and conscientiously believe that without the action at law and the order for bail, that settlement would have taken place; on the contrary, is it not evident that without the action there would have been no settlement?

19. Did Mr. Kelsey apply to you for advice; or did he apply to you as a solicitor to draw up such a paper? Did you ever advise him, that a release of important rights obtained from Hobby under arrest in consideration of Kelsey's release of his action, such as it was, would stand in a court of equity?

20. Did the defendant Mr. Kelsey consult you as to accepting Mr. N. Lord as bail of Hobby without justifying? Do you not know that Mr. Lord refused to justify, and that Kelsey accepted him, and that Hobby gave Lord his word not to leave New York without settling the case with Kelsey, or procuring other bail?

21. Do you not know that the arrangement made between Kelsey, Lord, and Hobby, as stated in the foregoing cross interrogatory, was very agreeable to Kelsey, and he looked upon it as an incident very favorable to his views; that Mr. Lord would not consent to Mr. Hobby's leaving the city before the case was settled or other bail procured.

22. Did you never hear Kelsey say, that he would have the suit in equity settled before he would let Hobby go, or words to that effect? Did you never hear him say any thing of his desire to have the equity suit settled, and of his determination to use the power which he had over Hobby to enforce such a settlement?

23. When did you see the affidavit which the defendant has annexed to his interrogatories; was it drawn by you, or in your office?

Who is the person referred to in the first sentence of that affidavit as counsel of the deponent? Do you know how the deponent's counsel came to the knowledge of the fact that some objections had been set up to a certain settlement made by deponents on the 6th September last.

24. Have you ever seen a copy of the affidavit which Hobby made on the 16 November last, in relation to these matters? Has not a copy or some abstract of some such affidavit forwarded to you by Mr. Kelsey's counsel in South Carolina; also some copy or abstract of an affidavit made about the same time by Ossian Gregory? Can you undertake to say that there is in those affidavits or either of them any thing stated as fact that is not strictly true? And if there is in those affidavits any thing untrue, declare and specify the particulars which are in the affidavits and which are not true, and wherein the falsehood, error or inaccuracy is to be corrected.

25. Do you know any thing more tending to show that Hobby owed Kelsey nothing, but that Kelsey owed him a great deal: that he was arrested by Kelsey, and that the object of Kelsey in arresting him was to get a release; and that being under arrest, and going at large upon pledges given to his bail, that he would find other bail or settle before he went away, he executed a release and was discharged.

PETIGRU & LESESNE,
Complainants' Solicitors.

JOHN W. MITCHELL,
F. PELL and
JOS. K. EDGERTON, Esquires,
} *Complainants' Commissioners.*

Deposition of Seth P. Staples, of the city of New York counsellor at law, a witness produced, sworn and examined on oath at the office of Russell C. Wheeler, Esq., No. 13, Pine street, in the said city and State of New York, on the twenty-sixth day of March, 1840, by us Russell C. Wheeler, John W. Mitchell, and Joseph K. Edgerton, three of the commissioners named in the annexed commission (the other commissioners therein named having been duly notified but not appearing) and having first been sworn in the manner prescribed in the said commission, by virtue of a commission issuing out of the circuit court of the United States for the district of South Carolina and hereunto prefixed, directed to R. C. Wheeler, D. A. Comstock, John W. Mitchell, F. Pell, and Joseph K. Edgerton, for the examination of Seth P. Staples, Nathaniel Lord, and Benjamin A. Hegeman, Esquires, resident in New York, in a certain cause depending in said court, wherein Alfred M. Hobby and Thomas P. Bond are complainants, and Charles Kelsey and Charles McIntire are defendants, as follows: that is to say, Seth P. Staples of the city and State of New York, counsellor at law, of lawful age, being duly sworn, doth depose and say as follows:

1st. To the first interrogatory he saith: My profession is that of a lawyer, I have been in it forty years.

2d. To the second interrogatory he saith: I was consulted by Charles Kelsey on the eighth day of August, 1839, professionally, and I think also on one or two days before, on the subject of a suit against him, and one McIntire in the United States Court as I understood for the district of South Carolina, it was a bill in chancery in favor of one Hobby and another person whose name I do not recollect, and have not the papers before me to ascertain it, against said Kelsey & McIntire.

3d. To the third interrogatory he saith: A copy of the bill and a copy of the answers of Kelsey & McIntire, were laid before me with a letter from a Mr. King who I understood was counsel in said suit for said Kelsey & McIntire. I do not remember any other papers. An account also relating to the firm of which Hobby had been a member, was also laid before me at the same time or about the same time. The first point submitted to me on the papers was, whether any of the proof which after the lapse of time which had happened could be procured, would be of any service to the defendants in that cause, which subject was suggested by the letter of Mr. King, these were the papers and this, the point submitted to me on the eighth of August. At that time or soon after, and before it was known to me or before I was informed that a Mr. Hobby was in this city, Mr. Kelsey showed me a covenant dated I think, the 9th of February, 1822, a copy of which is annexed to the commission which I think to be a correct copy, and also a letter dated, sometime after the covenant written by said Hobby to said Kelsey in relation to said covenant. The point submitted to me upon the covenant was whether the unliquidated damages claimed by Kelsey upon the covenant, could be set of in the bill in chancery, and my opionion was that they could not. My opinion on the first point was, that no proof which he then stated he could produce, would be of any avail.

4th. To the fourth interrogatory he saith: On the twenty-seventh day of August, 1839, Mr. Kelsey informed me that A. M. Hobby was in town, and applied to me to know whether a suit could be sustained against him upon the covenant above mentioned; and stated to me the facts that had taken place in relation to that covenant, and upon these facts, I gave him an opinion that a suit could be sustained, and that so far as I understood the proceedings in chancery, there was no impropriety in commencing such a suit. Mr. Kelsey applied to me to commence a suit upon the covenant, and I thereupon directed the attorney in the suit to commence such suit and he did so. It was after I had given Mr. Kelsey my opinion and advice, on the points which he had submitted to me in his case in South Carolina, about twenty days after.

5th. To the fifth interrogatory he saith: This suit whas discontinued by the consent of the parties as I understood; I had nothing to do with the commencing of the suit, further than as above stated, but acted as counsel throughout when called on. Mr. Hobby was arrested upon a capias, and came to my office with the officer to

know if the officer might take the bail which he offered, and I directed the officer to take the bail, which was Mr. Nathaniel Lord. It was then stated by the officer or Mr. Hobby, that Mr. Lord would go bail, but that he was irresponsible, and could not justify. I told the officer however, he might take his bail; Hobby was held to bail as I understood, Mr. Lord became his bail, and I made no objection, well knowing that Mr. Lord could not justify. There was nothing harsh in the conduct of Mr. Charles Kelsey towards A. M. Hobby within my knowledge, they did all this business out of court among themselves. There was no expectation at the time that Mr. Hobby could pay or was able to pay any considerable amount that might be recovered, the object being to liquidate the damages, and ascertain by the verdict of a jury what damages Kelsey & McIntire were entitled to in the suit upon the covenant.

6th. To the sixth interrogatory he saith: I have looked upon the paper annexed to the interrogatories, marked "A," and believe it to be a correct copy of the affidavit which I drew for Charles Kelsey. All the facts therein stated, with respect to the suit of the said Charles Kelsey against said Hobby, so far as I have any knowledge are correct; I attended before the judge on showing cause, and attended to all the legal proceedings in regard to said suit, and advised concerning the same, but took no part in the settlement, but advised to the same if it was satifactory to all parties. I did advise Charles Kelsey that he had a right to bring the said suit, notwithstanding the pendency of the suit in South Carolina as above stated, and as is stated in the affidavit referred to.

7th. To the seventh interrogatory he saith: Mr. Hobby never was to my knowledge or belief imprisoned in said suit. He had the benefit of counsel, Daniel Lord jr, Esq., one of the most eminent counsellors of this city, as well as a faithful and attentive man to his business, and I believe he acted by advice of said counsel throughout, but I do not know the fact of my own knowledge; Mr. Hobby might have left New York at any time after he had given bail, if he had chosen to do so. If he had gone away and never returned, he would have forfeited his bond, and might have drawn his bail into trouble.

8th. To the eighth interrogatory he saith: I do not now recollect any thing further in this cause necessary to be here stated.

1. To the first cross interrogatory he saith: I consider myself at liberty to answer any questions in relation to the subject matter of this commission, and that I am under no restraint from any professional obligation, and I consider that Mr. Kelsey has waived and has a right to waive, for Mr. McIntire and himself, the protection of a client, and I believe both would desire me to state all I know on the subject, and I answer the whole of this interrogatory in the affirmation.

2. To the second cross interrogatory he saith: Mr. Kelsey consulted me as early as the eighth day of August, 1839, as above

stated, and I think a day or two before, at least twenty days before the twenty-eighth of August, 1839, but how much longer I cannot state positively; I have not the letter of his counsel which he refers to in the affidavit annexed to the interrogatories, and have it not in my power to produce it, and know not where it is, unless it be in Mr. Kelsey's hands, to whom I returned it; I cannot state the contents of that letter any further than I have already done it; the reason I cannot produce the original is that I gave it to Mr. Kelsey. All the papers ever given up to Mr. Kelsey at the time of the set tlement of the suit, and they were probably brought back at the time I drew the affidavit marked "A," and returned to him again with the draft of that affidavit and all the within papers.

3. To the third cross interrogatory he saith: Mr. Kelsey submitted to me a copy of the bill, and the answers, and the other papers as above stated in the direct examination, but I have no recollection of ever seeing, nor do I believe that I ever did see the two reports of Mr. Jervey, or the two orders, or abstracts, or copies of any of them referred to in this interrogatory, and never heard Mr. Kelsey say he ever had any such papers in his possession that I recollect.

4. To the fourth cross interrogatory he saith, Mr. Kelsey did consult me in this suit referred to, as I have stated in my direct examination, and I gave him the opinion as I have therein stated, but no general opinion as to the probable result of the suit, as that point was not submitted to me, and I had not the means of judging; I was in no otherwise engaged than as above stated, and I gave him the opinions above stated, that the evidence referred to would be of no further avail. I was no further consulted or engaged to render professional services to prepare the suit for trial, I gave him no further advice or opinions in the cause than as I have already stated, and did nothing more, and did not recommend him to do any thing more that I recollect.

5. To the fifth cross interrogatory he saith, whether Kelsey expected to gain or lose his suit I cannot say as he kept such expectations, if he had any to himself, but he often expressed great confidence in the justice of his suit, and if he was in any danger it was in consequence of lapse of time and loss of testimony. His application to me was mainly to see whether he could or could not have the amount of damages which he claimed to have sustained by violation of the covenant referred to, liquidated and set off in that suit, and my opinion was, that he could not.

6. To the sixth cross interrogatory he saith, Mr. Kelsey applied to me to hold Hobby to bail on the twenty-seventh day of August, and perhaps the day before; I knew nothing as to what were the matters put in issue in said suit of Hobby vs. Kelsey, except what I learned from the bill and answers, to which I understood there were replications; I knew the contents of the bill, and believe the object of it was as stated in this interrogatory.

7. To the seventh cross interrogatory he saith, I know nothing

relative to the matters stated in this interrogatory, except what I have stated as to the bill and answer above referred to.

8. To the eighth cross interrogatory he saith, I can only say, that I had before me at the time I was consulted by Mr. Kelsey, the bill and answers, but the contents of the answers particularly, I do not now recollect, as I have not seen them since I delivered them to Mr. Kelsey, which was on or before the date of the affidavit marked A. I did understand that they denied assets, and that they had any money to pay Hobby, as stipulated in the articles of dissolution, and Kelsey supposed that the amount of damages he was entitled to under the covenant was more than any sum that Hobby could be entitled to in any event, and Kelsey relied upon the breach of the agreement by Hobby, in not protecting them against the judgment of the United States Bank, and the want of assets, and perhaps he relied upon other grounds.

9. To the ninth cross interrogatory he saith, I did not know that so far as the defendants could prove damages sustained by them on account of the judgment aforesaid, those damages had been allowed them in Mr. Jervey's reports, nor do I know that they ever attempted to prove damages, or any thing of Mr. Jervey's reports, nor do I know that they had taken evidence of consequential damages, or that they had failed to prove themselves entitled to any, and I know nothing further in answer to this interrogatory, as I never saw or heard of any of Mr. Jervey's reports to my recollection.

10. To the tenth cross interrogatory he saith, when I was consulted by Mr. Kelsey, I advised him that he could sustain the action for special damages, and brought the action for that purpose, and the grounds for those special damages are stated in the affidavit of Kelsey, made before Joseph Strong, on the 31st day of August, 1839, and used before the judge on shewing cause of action, and resisting the motion for the discharge of Hobby without bail; a copy of which I see is annexed to the cross interrogatories, which I believe to be a correct copy.

11. To the eleventh cross interrogatory he saith, I have looked at the papers referred to, and think the paper purporting to be an affidavit of Charles Kelsey, to be a true copy of the affidavit which he made in answer to the rule to shew cause, but in whose handwriting the said copy is I know not. The order of Judge Oakley, I think is the original, signed by himself; I insisted before the judge upon the matters set forth in the affidavit; I think it probable I did insist upon the other matters stated in the interrogatory, but do not now recollect particularly. The judge did give his reasons for moderating the bail, on making the order, but he was very short. The case was fully argued on both sides, but no ground set up on the part of Hobby, that the matter for which Hobby was sued here was pending before another court. The ground on which the bail was fixed at $1,500, as I understood was, that it was reasonable bail

under all the circumstances; no particular ground was stated by the judge for that sum, that I recollect.

12. To the twelfth cross interrogatory he saith, I did give Kelsey advice as to the probable result of his suit at law, but not in connection or dependent upon the event of Hobby's recovering a larger sum of money in the United States court against him and McIntire. I gave him advice as to the result of his action at law, but not dependant on the question whether his suit in equity should be tried first. I thought it very probable that the action at law would be tried before the final issue of the bill in chancery, but did not take it for granted; I did not consider the question under the supposition, that it would depend upon circumstances, whether the action at law would be ever tried; I don't think that train of thought ever passed through my mind. I did suppose and so advised Mr. Kelsey, that if it was necessary he could apply to the court of chancory in South Carolina, and get time allowed him to ascertain by the verdict of a jury, what damages he was entitled to upon the covenant referred to.

13. To the thirteenth cross interrogatory he saith, I do believe that I knew what Mr. Kelsey's object was in commencing the suit against Hobby; I beleive his motive in commencing the suit at law had relation to the suit in the United States court, and that it was to ascertain the damages as above specified.

14. To the fourteenth cross interrogatory he saith, I advised Mr. Kelsey to proceed as he did; I am not aware that the suit at law, was upon the same argument upon which Hobby was suing Kelsey & McIntire. The benefit and end which I advised Kelsey & McIntire, they would obtain by the action was, the ascertainment of the damages which Kelsey & McIntire had sustained as they alleged by the levy of an execution upon their store of goods, by the procurement of Hobby as they alleged, and believed they would be able to prove, as set forth in the affidavit before referred to, that was the point to be gained by the action at law, and if Hobby recovered in equity I supposed the verdict and judgment in the suit at law might be a set off against that recovery, and if Kelsey succeeded in equity he would have his verdict and judgment against Hobby. I am not aware that the courts of the United States sitting in equity have any power to arrest unliquidated damages upon a covenant like that upon which Kelsey & McIntire commenced their suit against Hobby, and that without the intervention of a jury.

15. To the fifteenth cross interrogatory he saith, I should have given the same advice had the bill in equity been pending in the United States court in New York, and I have no doubt Mr. Kelsey would have bronght a suit had Mr. Hobby been a resident of the city of New York; and I believe the same inducements in part, that is, all except what relates to bail, and that would not have been necessary had he been a resident, would have existed in the mind of Mr. Kelsey.

16. To the sixteenth cross interrogatory he saith, from all that I

have seen or know the effect of the bringing of the action of in the city of New York against Hobby was to produce a settlement, which settlement from all I believe or know was perfectly free, fair and honorable on the part of Hobby and the parties concerned. I think the suit at law promoted that settlement but did not coerce Hobby to it. I cannot say with what view and intent the action was brought and therefore I cannot say that it was without any intent to the purpose it actually served, but I suppose that it was brought with the intent to have it tried or settled as the parties might agree.

17. To the seventeenth cross interrogatory he saith, I have never seen the instrument referred to, that I recollect, nor was I consulted about it before or after until Hobby's return to the south.

18. To the eighteenth cross interrogatory he saith, from all that I have seen or know or believe, my opinion as to the cause of that settlement is that it was owing to Hobby's being conscious that no part of the sum by him claimed was due, and this opinion is founded upon what Mr. Kelsey informed me Hobby said and admitted as to certain papers and evidence that had been lost and destroyed by fire. I do not believe that without the action at law and the order for bail that settlement would have taken place, as it had remained so long unsettled and Hobby had allowed such a protracted litigation concerning it, but I do not believe that Hobby was coerced by fraud or force to that settlement, as I have been informed and believe that he remained here for some considerable time after the settlement, on intimate terms with Mr. Kelsey.

19. To the nineteenth cross interrogatory he saith, Mr. Kelsey did not apply to me for advice concerning the settlement nor to draw up the paper, that I recollect. I did not give him any such advice as that stated in the interrogatory but had I known of a proposed settlement in the situation in which Hobby was and so far as I know or believe he was under any restraint by that suit I should have advised that he might have made any settlement which seemed to him proper, for he was free to settle or not to settle, or to make any arrangement he thought proper under the advice of his counsel notwithstanding the arrest.

20. To the twentieth cross interrogatory he saith, I do not recollect that Mr. Kelsey did consult me as to accepting Mr. Lord as bail without justifying. I gave the directions to accept Mr. Lord as bail without consulting Mr. Kelsey. When I informed Mr. Kelsey of the directions that I had given the officer he seemed at first to be dissatisfied, but when I informed him that for the purposes of a trial and ascertaining the damages that bail was as good as any, he appeared satisfied. I do not know that Mr. Lord refused to justify but I do know that he was unable to justify, and that I accepted him without consulting Mr. Kelsey. I do not know any thing about the use of this interrogatory.

21. To the twenty-first cross interrogatory he saith, I do not know any thing of the matters enquired of this interrogatory.

22. To the twenty-second cross interrogatory he saith, I have no recollection as to any of the matters contained in this interrogatory.

23. To the twenty-third cross interrogatory he saith, I saw the affidavit at the time it was drawn and I presume drew it, and presume that I am the person mentioned there as counsel for the deponent in that affidavit. The deponent's counsel came to a knowledge of the fact that objection was set up against the settlement by means of a letter from Mr. King, Mr. Kelsey's counsel in Charleston to Mr. Kelsey.

24. To the twenty-fourth cross interrogatory he saith, I have never seen a copy of the affidavit of Hobby referred to in the interrogatory, and have no recollection that any copy or abstract of any such affidavit was forwarded to me by any body, nor have I seen any copy or abstract of any affidavit made at any time by Ossian Gregory, and having no knowledge or recollection of the papers or their contents cannot answer anything relating to them.

25. To the twenty-fifth cross interrogatory he saith, I know nothing more than what I have above stated.

Signed, SETH P. STAPLES.

New York, March 26, 1840.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 26th day of March, A. D. 1840, before us

R. C. WHEELER,
JOHN W. MITCHELL,
JOSEPH K. EDGERTON, } *Commissioners.*

In witness whereof we the said commissioners have hereunto set our hands and seals at the city of New York and in the State of New York, the twenty-sixth day of March, 1840.

Signed, RUSSELL C. WHEELER, [L. S.]
JOHN W. MITCHELL, [L. S.]
JOSEPH K. EDGERTON, [L. S.]
Commissioners.

Interrogatories for Nathaniel Lord, Esquire.

1. Do you know the complainants and defendants in the title of these interrogatories named, and how long have you known them?

2. How long have you known Mr. A. M. Hobby and when did you first know him, were you or not intimate with him, and if yea how long have you been so? Did you or not see him on his arrival last summer in New York? Did he or not enquire for you, and if yea how soon after his arrival? Did he or not say to you, and when, that he intended to consult you about the business that carried him to New York? What was the business?

3. Did or not Mr. A. M. Hobby some time and when, apply to you to become his bail at the suit of Kelsey & McIntire and what occurred on such application?

4. Do you or not know of a settlement between Hobby & Kelsey? How was that settlement effected?

5. Was Hobby ever put in jail in this suit or not? Was there any thing harsh and oppressive in the manner in which it was conducted against him?

6. Was or not that settlement voluntary on the part of Mr. Hobby? or how otherwise, was he constrained or compelled to make the settlement?

7. Did you or not see Mr. Hobby and how often after the settlement? Did he ever complain to you about it? What did he say about it?

8. Did he or not seem satisfied with it? Did he or not say he was satisfied with it? Did or not say he had settled all matters amicably with Kelsey? Did or not say that he did not blame Mr. Kelsey? Did he or not say that he Hobby would have done the same thing had he heen in Mr. Kelsey's situation?

9. Had not Mr. Hobby the benefit of counsel in this suit? Who was his counsel? What is his standing in the profession? Did or not Mr. Hobby act by the advice of his counsel?

10. Do you know any other matter, cause or thing, that may benefit the defendants or either of them? then state the same as fully as if thereupon specially interrogated.

Signed,

M. KING,
Defendants' Solicitor.

Cross interrogatories for N. Lord, Esq., a witness to be examined on the part of the defendants.

1. When A. M. Hobby came to you in New York to be his bail, did you know or believe that he was actually the creditor to a large amount of the gentleman at whose suit he was ordered to find bail?

2. Did you see Mr. Kelsey or his lawyer, or both before you signed the bail bond? What did you see Mr. Kelsey for? did you make any explanation to him? what was that explanation? was your conversation friendly or formal? did you seek from him any information to decide your judgment upon the subject, whether you would or would not be bail for the defendant?

3. Did not Mr. Kelsey go into particulars with you, either then or at any other time on the subject of the suit against Hobby? did he not mention a suit of Mr. Hobby against him in South Carolina, did he not tell you something about Hobby's suit and Hobby's lawyers, what was it? Did he not represent the suit in South Carolina as being a very oppressive one? Did he not give you to understand that he wished to have that suit in South Carolina settled? did you not in fact leave Mr. Kelsey under the impression that he had been hardly dealt by, and that Hobby was in the wrong?

4. Who was present at the conversation between you and Mr. Kelsey when you spoke to him about the application of Hobby to

you to become bail? did the other persons present join in the conversation, and what did they say?

5. Did you not tell Hobby that you would not justify as bail to the amount of $4,000? Are you not in fact worth 4,000 dollars and more?

6. Did you not execute the bail bond hereto annexed? And was not the memorandem in pencil at the bottom made at the same time? By whom was that memorandem made?

7. Did not Hobby before you signed the bond make some honorary pledges that he would not go away?

8. Was Hobby ever released from those honorary pledges till the 6th September, after a settlement and mutual release between him and Mr. Kelsey?

9. Did you ever advise Hobby to leave New York after his arrest and before the 6th September?

10. In becoming Hobby's bail did you not trust to his honor that he would not quit New York 'till he settled with Kelsey or procured other bail? Was not some such promise or some honorary pledge to that or to some such effect, given by Hobby in the presence of Kelsey? If not given in the presence of Kelsey was it not made known to him or to his counsel?

11. Did not Mr. Kelsey know when he accepted you as bail without justifying, that Hobby had promised that he would not go away? did you not give Mr. Kelsey some assurance of that kind? What was that assurance? State the terms and effect of it as accurately as you can.

12. Did not Mr. Kelsey give you to understand that the business between him and Hobby could be made up or settled in some way? do you recollect in what way, or whether any way was suggested in which the matter could be settled?

13. Do you not know that Hobby applied to several persons to be his bail? Did you not desire him to get other bail? Have you not reason to believe that he tried to get other bail without success?

14. Could you have justified for fifteen hundred dollars after the bail had been reduced to that sum? Did you not impress on Hobby the importance of getting bail? And have you not reason to believe that he tried to borrow fifteen hundred dollars, or to get bail to that amount, without success.

15. Did you not at the time consider the settlement of 6th September as a reasonable one? Was it not just such a settlement as Mr. Kelsey had intimated to you he would accept of?

16. Did you know the circumstances of A. M. Hobby? Did you consider him as a rich man? Had you any reason to believe that he had either money or friends in New York? If you answer in the affirmative, state the grounds of your opinion; state what money he had, and who were his friends, and what they were able to do, and what they actually did for him.

17. Did you ever see the pleadings, depositions, reports, and in-

terlocutory orders, in the case in the United States court for South Carolina, Hobby vs. Kelsey.

18. Did Hobby lay before his counsel any copy or abstract of the papers above referred to? Did his counsel advise him as to the probable result of his suit in the United States court? or as to the probable of the action at law by his debtor against him in New York? Declare all that you know fully.

19. Was not Hobby in great distress after his arrest? Did not his suspense and anxiety, and the refusal of persons that he had relied on to bail him, and the prospect of a jail affect him severely? Have you not seen him weep and betray other marks of distress in conversing with you?

20. Do you not believe and have you not every reason to believe that if Hobby had had money he would have paid the fifteen hundred dollars to which the bail was reduced? Do you not know that if he could have paid the money or given bail, he would not have released his suit in equity against Kelsey?

21. Did the counsel of Mr. Hobby ever advise him to release his claims on Kelsey, if Kelsey would release him? Was the counsel furnished with evidence to enable him to judge of the value of Hobby's claim? Could he have advised him to release a claim of the value of which he was uninformed?

22. Have you ever seen the affidavit which Hobby made on the 16th November last, in relation to this matter or the testimony of Mr. Gregory. Can you undertake to say that there is in those affidavits or either of them any thing stated as a fact, which is not strictly true, and if there is in those affidavits any thing untrue, declare and specify the particulars, which are in the affidavits and which are not true, and say wherein the falsehood, error, or inaccuracy is to be corrected.

23. Do you know any thing more tending to shew that Hobby owed Kelsey nothing, but that Kelsey owed Hobby a great deal? That he was arrested by Kelsey, and that the object of Kelsey in arresting him was to get a release, and that being under arrest and going at large upon pledges given to his bail, that he would find other bail or settle before he went way; he executed a release and was discharged.

PETIGRU & LESESNE,
Complainants' Solicitors.

JOHN W. MITCHELL, F. PELL, AND JOS. K. EDGERTON, Esquires. } *Complainants' Commissioners.*

Depositions of Nathaniel Lord of the city of New York, merchant, a witness produced, sworn, and examined on oath, at the office of Russel C. Wheeler, Esquire, No. 13 Pine street in the said city and State of New York, on the eighteenth day of March in the year 1840, by us Russel C. Wheeler, John W. Mitchell and Joseph K. Edgerton, three of the commissioners named in the annex-

ed commission (the other commissioners therein named having been duly notified, but not attending, and we having first been duly sworn in the manner presented in the said commission) by virtue of a commission issuing out of the circuit court of the United States for the district of South Carolina and hereunto prefixed directed to R. C. Wheeler, D. A. Comstock, John W. Mitchell, F. Fell, and Joseph K. Edgerton, for the examination of Seth P. Staples, Nathaniel Lord, and Benjamin A. Hegeman, Esqs, resident in New York in a certain cause depending in said court, wherein Alfred M. Hobby, and Thomas P. Bond & complainants, and Charles Kelsey and Charles McIntire are defendants as follows, that is to say, Nathaniel Lord of the city and State of New York merchaut, of lawful age, being duly sworn doth depose and say as follows:

1. To the first interrogatory he saith, I do, I knew them all for upwards of twenty years, except Mr. Bond, I do not know.

2. To the second interrogatory he saith, upwards of twenty years. I believe I first knew him in 1810 or 1811, cannot say positively. I was not intimate with him, met him in society. I saw him shortly after his arrival in New York last summer. Can't say whether he did or not inquire for me. He came to my office in the custody of an officer. Cannot say how soon after his arrival. Did not say to me that he intended to consult me about the business that brought him to New York. After some days Mr. Hobby mentioned to me that he had come with a view to purchase goods.

3. To the third interrogatory he saith he did. The first I saw of him he came to my office in charge of the officer. It was late in the month of August last I should say. I stated that I did not know that I had any objection provided I was a competent bail. He apologized for calling upon me, as he had no claim upon me of that kind on account of former acquaintance. He said his situation was most unpleasant, it being then four or five o'clock in the afternoon, and he knew of no other acquaintances to whom he could make the application. He said if I would become temporary bail, he expected some southern friends in town in a few days, and that no doubt he would be able to relieve me. I told him that I had no objection provided the officer would take me. I stated to the officer in his presence that if it was necessary for me to justify I would not like to do it. My affairs were in such a state I felt unwilling to justify if it should be required. I inquired of the officer who the lawyer was that had issued the writ, to which he answered Mr. Seth P. Staples. I suggested to the officer then to see Mr. Staples or Mr. Kelsey, and if my bail would be accepted I would sign the bond. He observed that he would go around and see Mr. Kelsey. He did go, and returned in the course of fifteen or twenty minutes, and stated that Mr. Kelsey referred the matter to Mr. Staples. I then suggested his going to Mr. Staples, and also that Mr. Hobby would accompany him. They went, and returned shortly, saying that Mr. Staples would be satisfied with my bail. I signed the bond then. As far as I recollect, nothing fur-

ther occurred. I should perhaps state that Hobby said that my becoming bail should not put me to any trouble.

4. To the fourth interrogatory he saith, I only know from Mr. Hobby, and both parties in fact, that a settlement took place. Mr. Hobby, I should perhaps state, came into my office some days after bail was given, indeed he was in every day, and said he would go around and see Mr. Kelsey and see what he could do with him. He came back in the course of the day, and stated to me that he had made a settlement with Mr. Kelsey. Don't know that I asked him on what terms. He said they had squared accounts. I don't know how the settlement was effected.

5. To the fifth interrogatory he saith, Hobby was not even put in jail in this suit to my knowledge. There was nothing that I saw harsh or oppressive in the manner in which this suit was conducted, unless it may be considered harsh to hold a man to bail. It was conducted in the usual way.

6. To the sixth interrogatory he saith, that settlement was voluntary on the part of Hobby as far as I know. He went around, as I understood him, for the purpose of making a settlement. He was not constrained to make the settlement that I know of.

7. To the seventh interrogatory he saith, I think Mr. Hobby left town a day or two after the settlement. I did not see him more than once or twice after the settlement. He did not complain to me of the settlement. After he returned from seeing Mr. Kelsey and after the settlement he expressed himself satisfied that their difficulties were ended. He observed that he did not blame Mr. Kelsey. That under similar circumstances he should have adopted the same course. He said nothing further that I recollect. I thought he seemed to be relieved. He and Mr. Kelsey had formerly been partners and on good terms. He expressed a great deal of good feeling for Mr. Kelsey.

8. To the eighth interrogatory he saith, he seemed satisfied with the settlement. He said he was satisfied with it. He did say he had settled all matters amicably with Mr. Kelsey. He said he did not blame Mr. Kelsey. He said that he, Hobby, would have done the same thing had he been in Mr. Kelsey's situation.

9. To the ninth interrogatory he saith, I believe Mr. Hobby had the benefit of counsel. He told me so. Daniel Lord was his counsel. He told me so. Mr. D. Lord's standing in the profession is very good. I have no knowledge that Mr. Hobby acted by the advice of his counsel. I only know that he told me he had consulted him.

10. To the tenth interrogatory he saith, I do not know any thing more that I think of.

1. To the first cross-interrogatory the said witness saith, I did not.

2. To the second cross-interrogatory he saith, I saw neither Mr. Kelsey nor his lawyer before I signed the bail bond. Not having seen Mr. Kelsey before signing the bail bond, I cannot answer

further to this interrogatory. I sought no information from Mr. Kelsey on the subject of this interrogatory. All that passed was through the officer, as I have before stated.

3. To the third cross-interrogatory he saith, Mr. Kelsey did after the settlement. He stated his difficulties with Hobby. I had heard Mr. Kelsey say some twelve months before that he had a suit with Hobby in South Carolina. It was a suit of Hobby *vs.* Kelsey. The particulars or merits of which he did not go into until after the settlement here with Hobby before mentioned. It was after I became bail. I am not sure whether it was before or after the settlement. He did tell me something about the suit, but nothing about the lawyers. He told me a suit had been pending there growing out of their old partnership. The amount in controversy I do not remember he said any thing about. He did represent the suit in South Carolina as being a very oppressive one. He did not give me to understand that he wished to have that suit settled. I did not leave Mr. Kelsey under the impression that he had been hardly dealt by, and that Hobby was in the wrong.

4. To the fourth cross-interrogatory he saith, I did not speak to Mr. Kelsey about the application of Hobby to me to become his bail. I have not, therefore, any further answer to make to the residue of this interrogatory.

5. To the fifth cross-interrogatory he saith, I did tell Mr. Hobby that I would not like to justify at all. I believe $4,000 was the amount mentioned. I am not in fact, worth $4,000.

6. To the sixth cross interrogatory he saith, I executed the bail bond annexed to the interrogatories. I have no recollection that I saw the memorandum in pencil at the bottom of the bond at the time I saw the bond, nor do I know by whom it was made.

7. To the seventh cross interrogatory he saith, Hobby, before I signed the bond, gave me honorary pledges that he would not go away.

8. To the eighth cross interrogatory he saith, he was not. I never said any thing to him about his pledges after his signing the hond.

9. To the ninth cross interrogatory he saith, I did not.

10. To the tenth cross interrogatory he saith, in becoming Hobby's bail I did trust to his honor that he would not leave New York until he had settled with Kelsey or procured other bail, he having assured me that such should be the case. No such promise or pledge was given in presence of Kelsey. I think I mentioned when I saw Mr Kelsey the next day to him, that I had become bail in his suit against Hobby, and that he, Hobby, had assured me that he would not leave the city until he had procured other bail, or until the writ was disposed of. I was induced to speak to Mr. Kelsey on the subject because he knew about my circumstances, and I supposed he might consider my bail as too slender. I also told him that I felt no doubt but that Mr. Hobby would remain, as he had assured me, until some arrangement was made.

11. To the eleventh cross interrogatory he saith, I did not see Mr. Kelsey nor have any conversation with him until after I had

become bail, nor do I know whether or not Mr. Kelsey had any knowledge when he accepted me as bail without justifying, that Hobby had promised that he would not go away. I gave him no assurance of the kind.

12. To the twelfth cross interrogatory he saith, Mr. Kelsey told me that he thought that the business between him and Hobby might be settled if they could come together; that he, Kelsey, felt a disposition to settle their affairs. He suggested to me no way in which the matter could be settled. I told him if I could aid in bringing them together I would do so.

13. To the thirteenth cross interrogatory he saith, Mr. Hobby told me that he applied to several persons to be his bail. I did not desire him to get other bail; I have reason to believe that he tried to get other bail without success; he told me that he had applied to one or two friends and did not succeed.

14. To the fourteenth cross interrogatory he saith, I could not have justified for any sum after the bail had been reduced to fifteen hundred dollars. I did not impress on Hobby the importance of getting other bail. I have no knowledge of his trying to borrow fifteen hundred dollars after the bail was reduced to fifteen hundred dollars; Hobby told me that he had tried to get bail for that amount without success.

15. To the fifteenth cross interrogatory he saith, I knew nothing about the terms of the settlement of the sixth of September; Mr. Kelsey never intimated to me what settlement he would accept of.

16. To the sixteenth cross interrogatory he saith, I did not know Hobby's circumstances; I did not consider him a rich man; I had no reason to believe that he had money or friends in New York.

17. To the seventeenth cross interrogatory he saith, I never did.

18. To the eighteenth cross interrogatory he saith, I know nothing of the matters enquired of in this interrogatory.

19. To the nineteenth cross interrogatory he saith, he appeared excited, and I may say that he appeared distressed. To the residue of this interrogatory I answer, that I saw nothing unusual in the appearance or conduct of Mr. Hobby. I have not seen him weep or betray other unusual marks of distress in conversing with me. He exhibited only such marks of distress as a man who was arrested by the sheriff would naturally exhibit. This is all that I can answer to this interrogatory.

20. To the twentieth cross interrogatory he saith, I have no reason to believe whether or not Hobby, if he had had the money, would have paid the fifteen hundred dollars, to which the bail was reduced. I do not know whether or not if he could have paid the money or given bail, he would have released his equity suit against Kelsey.

21. To the twenty-first cross interrogatory he saith, I know nothing of the matters enquired of in this cross interrogatory.

22. To the twenty-second cross interrogatory he saith, I have not

seen the affidavit or testimony, and therefore have no further answer to make to this interrogatory.

23. To the twenty-third cross interrogatory he saith, I know nothing further than what I have already stated.

Signed NATHANIEL LORD.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before us, this eighteenth day of March, A. D. 1840.

(Signed) R. C. WHEELER,
JOHN W. MITCHELL,
JOSEPH K. EDGERTON,
Commissioners.

Interrogatories for Benjamin A. Hegeman, Esquire.

1. Do you know the parties complainant and defendant in the title of these interrogatories named, and how long have you known them.

2. What is your employment, and how long have you followed it. Were you or not aware of a suit in the circuit court of the United States in South Carolina, between Mr. Hobby, and Mr. Kelsey, a partner in the firm of C. Kelsey & Co. ?

3. Were you or not present when Mr. Hobby called on Mr. Kelsey in New York about a settlement, and when did he call ; were you or not present at their interview ?

4. What occurred at their interview ; did or not Mr. Hobby propose a settlement ; was he or not under any restraint ; what was the manner of the conference between Mr. Hobby and Charles Kelsey. Did not Hobby appear to act freely and voluntarily ; did they or not agree to a final settlement of all matters in dispute between them ; did you or not witness the settlement. Did Mr. Hobby make any objection to it ; did he or not seem well satisfied with it ?

5. Did or not Hobby say, after the settlement, that the suit in South Carolina should be abandoned, that he considered it ended, or words to that effect ; or what did he say about it ?

6. What was Mr. Hobby's deportment during the interview, was it free and friendly, or was it cold and restrained ; did he or not seemed satisfied with what he was doing ?

7. Was there at the time the least doubt in your mind that the settlement was made in good faith and by the free will of both parties ?

8. Do you know any other matter, cause or thing that may benefit the defendants or either of them, then state the same as fully as if thereupon specially interrogated ?

M. KING,
Defendants' Solicitor.

ALFRED M. HOBBY and THOMAS P. BOND,
vs.
CHARLES KELSEY and CHARLES McINTIRE. } In Chancery.

Cross interrogatories for B. A. Hegeman, Esq., a witness to be examined on the part of the defendants.

1. Did you know, at the time of the supposed settlement, that Hobby was a poor man, a stranger, in custody of his bail, to whom he had pledged his word and honor not to go away; and that the gentleman who had held him to bail owed him a great deal, whereas he owed that gentleman nothing?

2. Were any papers signed at the time of the said settlement? Had those papers been drawn before hand, or were they prepared on the spot; who were they drawn by; and who prepared the drafts, and where were they engrossed; and how much time was taken up in advising, drawing, and engrossing those papers?

3. Are any schedules, in the shape of a debtor and creditor account, annexed to the papers that were signed? Was the schedule prepared before hand, or drawn up on the spot, and by whom? Was the account examined; what length of time did the examination of it consume? What time elapsed between the beginning of the settlement and the end of it; was it all done in one day or one hour; if it took several days, how were those days occupied?

4. Were the items of the account a subject of discussion; what were the points discussed? State and specify the disputed items, and specify the objections made.

5. Does not the account annexed to the paper which the parties signed, shew a balance against Hobby? What arguments did Hobby use to persuade Mr. Kelsey to release him from the payment of that balance?

6. Do you know that Hobby had once objected to the account rendered by Mr. Kelsey of their transactions? Did you not know that the suit in South Carolina was about that account? What arguments did Mr. Kelsey employ to remove Hobby's objections? Declare all you know.

7. Have you any reason to know, from any thing you heard and saw, from any of the people concerned in this business, that the action at law and order for bail, had some agency in removing Hobby's objections to the settlement? Do you know that his discharge from the order to find bail, was one of the consequences of that settlement?

8. Was not Mr. Kelsey very reluctant to settle with Hobby on those terms? Did he not afterwards, or at the time, regret the *the* sacrifice that he had made in consenting to dismiss his action against Hobby; did you never hear him speak on the subject; did you ever hear him express joy or sorrow, regret or exultation, at the result of the settlement; did you never hear him say any thing ex-

pressive of the success of the means that he had taken to bring about that settlement?

9. Did you not think, at the time, that Hobby was very much pleased, and had great cause to be gratified by the attentions he had received in New York, and grateful to Mr. Kelsey for his friendly behaviour? Did you think on the subject at all; and if so, what was it that you did think?

10. Do you know any thing more tending to shew that Hobby owed Kelsey nothing, but that Kelsey owed Hobby a great deal; that he was arrested by Kelsey, and that the object of Kelsey in arresting him, was to get a release; and that being under arrest, and going at large, upon pledges given to his bail that he would find other bail, or settle before he went away, he executed a release and was discharged?

PETIGRU & LESESNE,
Complainants' Solicitors.

JOHN W. MITCHELL,
F. PELL, and
JOSEPH K. EDGERTON,
Commissioners.

Deposition of Benjamin A. Hegeman, of the city of New York. in the State of New York, clerk, a witness produced, sworn, and examined, on oath, at the office of Russel C. Wheeler, Esq., No. 13, Pine street, in the said city and State of New York, on the thirteenth day of March, in the year 1840, by us, Russel C. Wheeler, John W. Mitchell, and Joseph K. Edgerton, three of the commissioners named in the annexed commission, the other commissioners therein named having been duly notified, but not attending, and we having first been duly sworn in the manner presented in the said commission, by virtue of a commission arising out of the circuit court of the United States for the district of South Carolina, and hereunto prefixed, directed to R. C. Wheeler, D. A. Comstock, John W. Mitchell, F. Pell, and Joseph K. Edgerton, for the examination of Seth P. Staples, Nathaniel Lord, and Benjamin A. Hegeman, Esquires, resident in New York, in a certain cause depending in said court, wherein Alfred M. Hobby and Thomas P. Bond are complainants, and Charles Kelsey and Charles McIntire are defendants, as follows, that is to say:

Benjamin A. Hegeman, of the city and State of New York, clerk, of lawful age, being duly sworn, doth depose and say, as follows:

1. To the first interrogatory, he saith: I am acquainted with all of them, except Mr. Bond. I have known Mr. Kelsey nearly five years, and Mr. McIntire between three and four years, and Mr. Hobby since last August.

2. To the second interrogatory, he saith: I am a clerk, and have been nearly five years. I was aware of a suit in the circuit court

of the United States, in South Carolina, between Mr. Hobby and Mr. Kelsey, as partners of the firm of C. Kelsey & Co.

3. To the third interrogatory, he saith: I was present when Mr. Hobby called on Mr. Kelsey about a settlement in New York: it was in the latter part of last August; the precise day of the month, I do not recollect. I was present at their interview.

4. To the fourth interrogatory, he saith: I cannot say that Mr. Hobby did propose a settlement. I think he was not under any restraint. The manner of the conference between Mr. Hobby and Mr. Kelsey was apparently friendly. Mr. Hobby appeared to act freely and voluntarily. They did agree to a final settlement of all matters in dispute between them. I did witness the settlement. Mr. Hobby did not make any objection to it that I heard; he seemed well satisfied with it. I was not present the whole time of the interview: during the time I was present, Mr. Kelsey exhibited the account of the old concern of C. Kelsey & Co., which was in dispute. There were some items in the account which had been objected to by the court. Mr. Kelsey explained the *the* items to Mr. Hobby. Mr. Hobby was apparently satisfied with the charges made in the account, and the account was settled. I have stated all that occurred, as I now recollect.

5. To the fifth interrogatory, he saith: After the settlement, Mr. Hobby said that the suit in South Carolina should be abandoned: he said he considered it ended; and I saw him write to his lawyer, advising him to discontinue the suit, and hand the letter to Mr. Kelsey to read. Mr. Hobby stated nothing further that I can recollect.

6. To the sixth interrogatory, he saith: Hobby's deportment was free and friendly during the interview; it was not cold nor restrained. He did seem satisfied with what he was doing.

7. To the seventh interrogatory, he saith: There was not, at the time, the least doubt in my mind that the settlement was made in good faith, and by the free will of both parties.

8. To the eighth interrogatory, he saith: I recollect no other matter, cause, or thing, that may benefit the defendants, or either of them, except what I have stated.

1. To the first cross interrogatory, he saith: I did not know, at the time of the supposed settlement, that Hobby was a poor man or a stranger. I know that he was in custody of his bail, but did not knew that he had pledged his word and honor not to go away; and I did not know that the gentleman who had held him to bail owed him a great deal, or that he owed that gentleman nothing.

2. To the second cross interrogatory he saith, there were papers signed at the time of the settlement; these were not drawn up beforehand, but prepared on the spot; part of the papers were drawn by Mr. George H. Kelsey, and the others by Mr. C. Kelsey. I am not aware that any engrossment of the papers was made. The papers were drawn in the store of Mr. C. Kelsey. I cannot say

precisely, but should suppose a half hour was taken up in drawing the papers.

3. To the third cross interrogatory, he saith, there is a schedule in the shape of a debtor and creditor account annexed to the papers that were signed; the schedule was prepared a long time beforehand by Mr. Edward Pierson, formerly a book-keeper of Mr. Kelsey. The account was examined by Mr. Hobby and Mr. Kelsey. I cannot say precisely what length of time the examination of the account consumed; I should think not more than ten minutes. I should think about three quarters of an hour, not longer than that, elapsed between the beginning of the settlement and the end of it. It was all done within an hour.

4. To the fourth cross interrogatory, he saith, the items of the account were not a subject of discussion. There were no points discussed. I cannot state or specify the disputed items. There were no objections made to my knowledge. There were some items which were understood to have been objected to by the court, which Mr. Kelsey explained.

5. To the fifth cross interrogatory, he saith, the account annexed to the paper, which the parties signed, showed a balance against Hobby. I do not know that Mr. Hobby made use of any arguments to persuade Mr. Kelsey to release him from the payment o that balance.

6. To the sixth cross interrogatory, he saith: I do not know that Hobby had once objected to the account rendered by Mr. Kelsey of their transactions. If the question refers to the account examined at the time of the settlement, I supposed the suit in South Carolina was about that account; but if the question relates to any other account, I do not know whether the suit was about that account or not. I do not know what arguments Mr. Kelsey employed to remove Hobby's objections. I have declared all I know, as I recollect.

7. To the seventh cross interrogatory, he saith: I have not any reason to suppose, from what I saw and heard from any of the people concerned in this business, that the action at law and order for bail had any agency in removing Hobby's objections to the settlement. I do not know that his discharge from the order to find bail, was one of the consequences of that settlement.

8. To the eighth cross interrogatory, he saith: Mr. Kelsey was not apparently very reluctant to settle with Hobby on those terms; he did not afterwards, or at the time, that I heard, express any regret at having made any sacrifice in consenting to dismiss his action against Hobby. I have heard Mr. Kelsey speak on the subject; I have heard Mr. Kelsey, when relating the transaction to his friends, say what he had done, and express himself, and he appeared to be very much relieved at the result of the settlement, saying that the South Carolina suit had always been a burden to him. I have heard him express joy, but not sorrow. I have never heard him regret the settlement, but have heard him express ex-

ultation at the settlement. I have heard him say things expressive of the success of the means which he had taken to bringabout that settlement.

9. To the ninth cross interrogatory, he saith: I did think at the time that Hobby was pleased; but as to the rest of this interrogatory, I did not think on the subject at all.

10. To the tenth cross interrogatory, he saith: I do not know any thing tending to shew that Hobby owed Kelsey nothing, or that Kelsey owed him a great deal. I knew that he was arrested by Kelsey; but I do not know that the object of Kelsey in arresting him was to get a release. And I do not know that Hobby, being under arrest, and going at large upon pledges given to his bail that he would find other bail or settle before he went away, executed a release and was discharged.

The witness, further answering to the last clause of the eigth cross interrogatory, saith: Mr. Kelsey, in relating the circumstances of the settlement to his friends, stated that he had commenced a suit, and held Mr. Hobby to bail; and he mentioned other circumstances which I do not recollect.

Signed B. A. HEGEMAN.

Examination taken, reduced to writing, and sworn to, this 20th day of March, A. D. 1840, before us.

R. C. WHEELER,
JOHN W. MITCHELL,
JOSEPH K. EDGERTON. } *Commissioners.*

No. 51.

Proceedings had in New York, in the case of C. Kelsey and C. McIntire vs. *A. M. Hobby.*

Bail Bond.

Know all men by these presents, that we, Alfred M. Hobby and Nathaniel Lord, are held and firmly bound unto Jacob Acker, sheriff of the city and county of New York, in the sum of four thousand five hundred dollars, lawful money of the United States of America, to be paid unto the said Jacob Acker, his administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the 28th day of August, in the year of our Lord one thousand eight hundred and thirty-nine.

The condition of this obligation is such, that if the above bounden Alfred M. Hobby, defendant, shall appear in a certain action in a plea of covenant broken, to the damage of the said plaintiffs of ten thousand dollars, as is since commenced against the said defendant, Alfred M. Hobby, by Charles Kelsey & Charles McIntire, plaintiffs, in the superior court of the city of New York, by putting in special

bail within twenty days after the fourth day of September next, and by perfecting such bail, if required, according to the rules and practice of the said court, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed A. M. HOBBY, [L. S.]
NATHANIEL LORD. [L. S.]

Sealed and delivered in the presence of
W. JONES.

NEW YORK, *Superior Court.*

ALFRED M. HOBBY
ads.
CHARLES KELSEY and CHARLES MCINTIRE.

Let the plaintiffs in this case shew cause of action against the defendant, before one of the justices of this court, at chambers, on Saturday morning, August 31, 1839, at 10 o'clock in the forenoon of that day. And why, if cause be shewn, the sum in which the defendant is held to bail should not be mitigated.

New York, August 30, 1839.

Signed THOS. J. OAKLEY.

NEW YORK, *Superior Court.*

ALFRED M. HOBBY
vs.
CHARLES KELSEY AND CHARLES MCINTYRE.

City and County of New York:

Giles M. Hillyer of said city and county, maketh oath that on the 30th day of August A. D. 1839, he served upon George C. Goddard, Esquire, attorney for the plaintiffs in the above cause, a copy of the above order to shew cause of action, by delivering the same to Seth P. Staples, Esq. who had charge of the office of said attorney who was at the time absent from the city: and further saith not.

(Signed) GILES M. HILLYER.

Sworn before me this 31st day of August 1839.

(Signed) J. OAKLY.
Commissioner of deeds.

SUPERIOR COURT,

ALFRED M. HOBBY
ads.
CHARLES KELSEY AND CHARLES MCINTYRE.

On hearing cause of action shewn, let the bail to mitigated to fifteen hundred dollars and let the defendant be held to bail in that amount.

Dated August 31st, 1839.

(Signed) THOS. J. OAKLEY.

SUPERIOR COURT, *City and County of New York, ss.*

CHARLES KELSEY AND CHARLES MCINTIRE
vs.
ALFRED M. HOBBY.

Charles Kelsey, one of the plaintiffs in the above entitled case having been duly sworn deposeth and saith, that the cause of action for which the defendant hath been arrested in the above entitled case is founded upon a certain instrument in writing under hand and seal, a copy of which is hereunto annexed, and the failure of the defendant to perform the covenants on his part in said instrument contained in this, that the defendant wholly failed to protect the plaintiffs in this cause, who are parties to the said instrument, from the judgment named in the aforesaid instrument or covenant, that on or about the first day of February 1823, execution was taken out on the judgment named in the said instrument against the plaintiffs in this cause for the sum of thirty thousand dollars or for about that amount, and for the sum of about six thousand dollars immediately levied upon a store of goods, which the plaintiffs then owned, and situated in Savannah in the State of Georgia of the value of twenty thousand dollars and upwards, and which store of goods the plaintiffs in this action were then selling out to their customers, all which was well known to Hobby, that said judgment and execution of said Thomas Gardner, named in said instrument, who were the particular friends and relations of said Alfred M. Hobby, and that said execution was so as aforesaid levied by the knowledge, and from a letter this deponent hath seen, he this deponent hath reason to beleive that such levy was made with the knowledge if not by the procurement of said Hobby, and that instead of using any measure or execution to protect the plaintiffs in this cause from said judgment and the execution issued thereon, he influenced the holders of said judgment to levy said execution upon the aforesaid store of goods, and this deponent further saith, that the officer who had said execution, took possession of the plaintiffs said store of goods and held the possession thereof until the plaintiffs were able to procure from their friends such bonds as enabled them to obtain a return of their goods. That in order to stay the proceedings on said judgment and prevent a sale of the stock of goods levied upon by said execution, the plaintiffs were compelled to file a bill and institute proceedings in chancery by which they ultimately, after giving bonds to a very large amount, the exact sum is not now recollected, obtained an injunction, and finally after much ligitation delay and expense got relieved from said judgment and execution; and this deponent further saith, that at the time said execution was levied on this aforesaid store of goods, a large amount of them had been obtained on credit, and for which the said plaintiffs were largely in debt and had accomodations endorsed to a large amount, all which this deponent believes

was well known to Alfred M. Hobby: that said suit was in chancery upwards of two years before the plaintiffs obtained relief from the same; that during said period this deponent and said Charles McIntire spent much time in search of evidence to show that property had been obtained from other persons bound to pay said judgments and was held as security for the same and that said judgment ought to be satisfied, that as the plaintiffs' *that as the plaintiffs'* books and papers in relation to this business, not then in the hands of counsel were destroyed in their store by the fire at Charleston, South Carolina, in April 1838, this deponent is unable to state the precise sums paid out in obtaining relief from said judgment and execution, but according to his best recollection the sum paid for counsel fees was three hundred dollars or more, and the amount expended for other law expenses were at least three hundred and fifty dollars, which the plaintiffs are entitled to with the interest thereon, and that in time spent in the business of said suit and in damage to their business by reason of the levy of said execution, the said plaintiffs suffered to the amount of four thousand dollars and upwards over and above said sums of money paid out as this deponent believes, and that said sums of three hundred dollars and three hundred and fifty dollars with the interest thereon since 1823, and said sum of money four thousand dollars, is now justly due the plaintiffs in this cause.

(Signed) C. KELSEY.

Sworn to before me this 31st day of August 1839.

JOSEPH STIONY,
Commissioner of Deeds.

Articles of agreement entered into at the dissolution of the firm of C. Kelsey & Co., between Alfred M. Hobby of the first part, and Charles Kelsey and Charles McIntire of the second part, witnesseth that the said Alfred M. Hobby doth agree to withdraw from the firm aforesaid upon the following conditions.

That the said parties of the second part are to take upon themselves the entire settlement of the business of said firm, and are to pay to the said Alfred M. Hobby after the debts of the said firm are all paid and discharged and a sufficient sum collected out of the debts now due to the said firm, five thousand five hundred dollars; and in Bridge bills whenever be shall demand them, one thousand one hundred and thirty dollars, and the said Alfred M. Hobby, for and in consideration of the above sums of money to be paid and the further sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, hath relinquished and by these presents doth transfer to the said parties of the second part all his interest or claims of whatever nature he has or may have as a partner in the said firm.

It is also stipulated and agreed that the said A. M. Hobby of the first part, in consideration as above specified, is to protect the said

parties of the second part, from a certain judgment obtained against said firm by the branch of the United States Bank in this city, and to hold them harmless from any balance, should there be any due after the conclusion of the settlement between John McIntire and Thomas Gardner respecting the said judgment.

And for the faithful discharge of this agreement, we bind ourselves, our heirs, executors, administrators or assigns.

Witness our hands and seals this ninth day of February, one thousand eight hundred and twenty-two.

Signed sealed in the presence of

JAMES W. TAYLOR.

Signed A. M. HOBBY, [L. S.]
CHAS. KELSEY, [L. S.]
CHAS. McINTIRE. [L. S.]

No. 52.

Testimony of G. H. Kelsey, in Court.

HOBBY & BOND, *vs.* KELSEY & McINTIRE.

Testimony of Geo. H. Kelsey, a witness produced on the part of the defendants, and sworn in court.

April 15*th*, 1840.

George H. Kelsey a witness produced on the part of the defendants and sworn in court, April 15th, 1840, deposed that he was in New York in September last, and was present at an interview between his uncle Charles Kelsey, one of the defendants, and A. M. Hobby, one of the complainants, and witnessed the execution of the release signed by Hobby, bearing date the 6th September, 1839, and that the statement endorsed on the original bond given at the dissolution of the co-partnership between the parties; that the same was cancelled; was signed by Hobby in his presence on the day mentioned. That when he entered the counting house of Charles Kelsey on that day, he saw him and Hobby in conversation, but had not previous to that time seen Hobby in New York. That Charles Kelsey & Hobby were seated at a desk, and appeared to be examining an account. That the account was the one between C. Kelsey & Co. and A. M. Hobby. That Charles Kelsey told Hobby he wished to get a settlement of the account, and asked him if he did not believe the items of it were correct. That Hobby in his reply mentioned to Charles Kelsey, that he believed they were correct, and upon Charles Kelsey asking him if he was willing that a settlement should take place between them, Hobby said that he was. That Mr. Charles Kelsey then mentioned that McIntyre was in indigent circumstances, and that something should be allowed to him for either expenses in conducting the suit, on a balance that was due to him—but he the witness does not remember the amount stated.

That Hobby then stated as he the witness thinks, his inability to pay any sum in that way, and that Charles Kelsey thereupon consulted him the witness, as to McIntyre's being satisfied without any remuneration, and he replied that he believed if McIntyre could get the case settled, he would be willing to have it end there without any payment to him. That there was some other conversation between Charles Kelsey and Hobby, and Hobby was asked whether he was willing to sign the papers produced in evidence (mentioned above.) That Hobby then said that he was willing to sign them—upon which he the witness wrote the paper produced (the release,) the same being a copy from a draft in Charles Kelsey's possession. That Charles Kelsey then asked Hobby if he had the entire control of the bond which he had given to him at the time of the dissolution of the co-partnership between them, and whether any other person was interested therein. That Hobby replied that he alone was interested in that bond, and had the whole power of settling it. That Charles Kelsey & Hobby then signed the paper produced in evidence, the witness witnessing their signatures. That after this, he the witness wrote the cancelment on the bond which has been read, and that Hobby appeared to be satisfied with what was done. That he the witness knows of nothing that occurred between Charles Kelsey and Hobby before he came into the counting house at the time above mentioned. That he saw no constraint used by Charles Kelsey to induce Hobby to make this compromise. That Hobby appeared perfectly cool, and satisfied with what he had done—that he does not know whether Hobby was under arrest at that time. That there was no sheriff or sheriff's officer present at the time. That there was no person present besides Charles Kelsey, Hobby and the witness. That he the witness had no conversation with Hobby after the execution of the papers referred to.

On his cross examination the witness stated, that he believes it is a fact that Hobby was arrested in New York, before the compromise mentioned above, but that he does not know it personally. That he does not know by whom the original release copied by him as he has stated was drawn. The original paper was not signed, because it was wished to have the release endorsed on the account.

That he had heard from Charles Kelsey, that Hobby had been arrested by him on a bail writ.

No. 53.

Letter from Hobby to Petigru.

MACON, *April* 26, 1838.

JAS. L. PETIGRU, Esq.,

Dear Sir: Mr. Kelsey and myself have had an interview on the subject of the suit in Charleston, brought by Bond and myself against McIntire and himself, and have concluded to leave the matter to referees.

You will therefore oblige me by withdrawing the suit in as far as I can control it, and appoint for me two gentlemen, to act with two others appointed by Mr. Kelsey, to whom the whole matter may be submitted; and in case of disagreement, the four persons to choose an umpire. Mr. Kelsey will give you any bond you may wish, to comply with their decision.

Respectfully,
A. M. HOBBY.

No. 54.

Letter from Pettigru to Kelsey.

CHARLESTON, 10 *September*, 1839.

SIR: A letter this day received from Mr. Hobby informs me, that you and he have settled your accounts, and directs me to discontinue the suit; what Mr. Bond will say to this I do not know, but I am certain that you and Mr. Hobby cannot combine to throw the costs of the suit upon me.

That you may not be taken by surprize this early notice is given that the suit will go on, 'till all the costs as between attorney and client are paid, and if so disposed, you may take the opinion of the court upon the point in December. In the mean time the proofs of the disputed items, agreeably to Judge Wayne's decree, will be collected as far as our investigations enable me to supply them.

Your obedient servant,
J. L. PETIGRU.

CHARLES KELSEY, Esq., New York.

No. 55. *Testimony of Fanning and Lamar, by Commission.*

THE UNITED STATES OF AMERICA,
Ninth Circuit, South Carolina District.

HOBBY & BOND, *vs.* KELSEY & McINTIRE. } In Equity.

Interrogatories for Major A. B. Fanning and G. B. Lamar, Esqrs., witnesses residing in Savannah, to be examined on the part of the plaintiffs.

1. Do you know the parties?
2. Were you in New York about the 28th August last, or at any time between the 28th August and 6th September last?
3. Did you see the plaintiff Hobby in New York? Did he call on you to make any request to you for assistance?
4. What was the nature of the difficulty in which the plaintiff

was? Was he or was he not under arrest, or in the custody of his bail; and at whose suit?

5. What was the representation made to you by the said Alfred M. Hobby? Was it the representation of a distressed and helpless person?

6. What was the nature of his application to you? What did he desire of you? Did he obtain his request? Declare what took place?

7. Did you see Charles Kelsey or his lawyers? Did you ascertain from them or any of them what the suit was about? Did Mr. Kelsey explain why he must have bail, or why he objected to Hobby's getting away from New York?

8. Do you know any thing more that may tend to show that Mr. Kelsey arrested Hobby in New York for the purpose of compelling him to a settlement or compromise of his claims on Kelsey?

Declare all you know as fully, as if you were particularly interrogated.

PETIGRU & LESESNE,
Complainants' Solicitors.

ROBERT M. CHARLTON, Esq.
Complainants' Commissioner.

A. M. HOBBY et al.
vs.
C. KELSEY & C. McINTIRE.

For the Defendants in the Interrogatories for the Plaintiffs, proposed to be administered to A. B. Fanning and G. B. Lamar, Esquires.

The defendants object to all the questions propounded to the witnesses in which they are required to state any conversation or conversations that may have taken place between them, or either of them with Mr. Hobby, or to testify to any thing said or done by him, unless it was said or done in the presence of Charles Kelsey. And the defendants also object to the interrogatories so far as they or any of them enquire into any thing said or done by the lawyers or agents of Charles Kelsey, unless it was said or done in his presence; and to any thing said or done in his presence in reference to the subject of these interrogatories to which the witnesses or either of them can testify; they are requested to state fully what was at the time said or done by Mr. Kelsey.

1. If you answer affirmatively to the seventh interrogatory, that you did see Mr. Charles Kelsey, then state fully what was the subject of your conversation with him. Was or not Hobby present at the interview? What was said by Mr. Kelsey?

2. Did you or not get your information on the subject of these interrogatories from Mr. Hobby or how much of it did you obtain from

him, and from whom or how was the rest of your information about it obtained?

3. Did you or not see Hobby in New York, after his settlement with Kelsey. Was he or not satisfied with that settlement? Did he then complain about it?

4. Do you know any other matter, cause or thing that may benefit the defendants? If yea, state the same as fully, as if thereupon specially interrogated.

M. KING,
Defendants' Solicitor.

Commissioners for Defendants:
JOHN M. BERRIEN and N. B. WEED, Esqrs.

SIXTH CIRCUIT COURT OF THE UNITED STATES,
South Carolina District.

ALFRED M. HOBBY & T. P. BOND,
vs.
CHAS. KELSEY & CHARLES McINTIRE. } In Equity.

Depositions of witnesses sworn and examined by the undersigned commissioners, in virtue of the annexed commission issued out of the honorable the sixth circuit court of the United States for the district of South Carolina, and to us directed, taken and reduced to writing in the city of Savannah, in the State of Georgia, on this fourth day of April, in the year eighteen hundred and forty.

Abraham B. Fannin, aged fifty years or thereabouts, being duly sworn, answers and deposes unto the annexed direct interrogatories, as follows:

1. To the first direct interrogotory, the witness answering saith, that he knows the parties.

2. To the second direct interrogatory, the witness answering saith that he was in the city of New York, during a part of the months of August and September last, but he cannot recollect the precise days.

3. To the third direct interrogatory, the witness answering saith, that he did see the plaintiff Hobby in New York; that said Hobby called at the lodgings of witness, and appeared to be labouring under strong feelings of mortification; he stated to witness that he had been arrested upon bail process issued against him by the defendant Charles Kelsey, and asked my assistance in procuring bail for him.

4. To the fourth direct interrogatory, the witness answering, saith, that the nature of the difficulty as explained to witness by said Hobby, was, in substance, that Kelsey and himself had been formerly copartners in business; that Kelsey had become his debtor; that he (Hobby) was prosecuting a suit against said Kelsey for a considerable sum of money; that he (Hobby) had gone on to New

York to purchase goods; that Kelsey finding him there, had raised an account against him for some three or four hundred dollars. Witness thinks that Hobby said, that Kelsey alleged this indebtedness to arise out of a fee paid Judge Berrien, for legal services while Kelsey and Hobby were copartners; upon which claim this bail process had been issued by Kelsey; that he, Hobby, had been arrested, and was at that time in the custody of his bail (who witness thinks was a Mr. Lord, the attorney of Hobby) or of the individual who had agreed to act temporarily as bail for him until he could have an opportunity of procuring permanent bail.

5. To the fifth direct interrogatory, the witness answering, saith, that the said Hobby represented himself to witness as having been badly treated by said Kelsey; that the course pursued towards him had destroyed his credit, and that situated as he was, amongst strangers, unless some of his southern friends stepped forward to his rescue, he would have to go to jail. The manner and conversation of said Hobby evinced the greatest distress.

6. To the sixth direct interrogatory, the witness answering, saith, that the said Hobby asked witness to become his security on the bond that might be required in said case. Witness did not see the bond, and cannot therefore state the conditions, but as well as he remembers it was for the appearance of said Hobby at court, and that he should respond to the judgment of the court on said process.

Witness tendered him the use of his name; Hobby returned afterwards, and informed witness that his name would not do, that his lawyer said it would not be taken, as he, witness, was a non-resident. Witness then endeavoured to see some of our wealthy and influential merchants who had friends in New York, if possible to procure their aid in Mr. Hobby's behalf. Witness saw Mr. J. P. Henry, and stated to him the case. Mr. Henry expressed his regret that from the absence of his friends generally from the city at that season, it would not be in his power to render the service required. Witness then went in pursuit of Mr. G. B. Lamar, but did not find him, as witness thinks he had left the city. Witness left Hobby in this helpless situation, when he, witness departed for Savannah.

7. To the seventh direct interrogatory, witness answering, saith, that he did not see either Charles Kelsey or his lawyers during the last summer; that he never had any conversation with said Kelsey or his counsel, concerning said suit.

8. To the eighth direct interrogatory, the witness answering, saith, that he knows nothing in relation to this case other than what Mr. Hobby said to him. He met with said Hobby in Macon, Georgia, afterwards on his way to Savannah, who had in all his previous conversation with witness in New York, stated that Kelsey's object was to coerce him (Hobby) into a compromise or relinquishment of his suit against said Kelsey, and in this last conversation held between Hobby and witness in Macon, Hobby told witness that

the alternative of going to jail or of abandoning his suit against Kelsey had been presented to him in New York, and that he had chosen the latter alternative. Witness knows nothing further.

Cross Interrogatories.

1. To the first cross interrogatory, the witness Abraham B. Fannin, answering, saith, that he did not see or converse with Mr. Kelsey on the subject.

2. To the second cross interrogatory, the witness answering, saith, that he got all his information on the subject from Mr. Hobby.

3. To the third cross interrogatory, the witness answering, saith, that he did not see Hobby in New York after the settlement with Kelsey; that he saw him in Macon, Georgia, after said settlement, when Hobby made the statement to him as detailed in his answer to the eighth direct interrogatory.

4. To the fourth cross interrogatory, the witness answering, saith, that he knows nothing that would benefit the defendants.

A. B. FANNIN.

Answered, subscribed, and sworn to before the undersigned commissioners, this 4th April, 1840.

J. MACPHERSON BERRIEN, [L. S.]
ROBERT M. CHARLTON, [L. S.]

Gazaway B. Lamar, aged forty-one years, being duly sworn, answers and deposes unto the annexed direct interrogatories as follows:

1. To the first direct interrogatory, the witness answers and deposes, that he knows Alfred M. Hobby and both the defendants.

2. To the second direct interrogatory, the witness answers and deposes, that he was in New York at the time stated.

3. To the third direct interrogatory, the witness answers, that he did see the plaintiff Hobby, in New York; he asked witness to be his bail.

4. To the fourth direct interrogatory, the witness answers, that Hobby informed him he had been arrested by Kelsey.

5. To the fifth direct interrogatory, the witness answers, that the said Hobby did represent himself to witness as a distressed and helpless person.

6. To the sixth direct interrogatory, the witness answers, that Hobby requested witness to procure some one in New York to be his bail, which witness did not do. Hobby told witness that he (Hobby) must either submit to a settlement with said Kelsey, upon the terms proposed by the latter, or get bail, or go to jail. Hobby made statements to witness about the suit, which witness cannot now remember.

7. To the seventh direct interrogatory, witness answers, that he neither saw nor conversed with Mr. Kelsey or his attorney on the subject.

8. To the eighth direct interrogatory, witness answers, that he knows nothing more.

G. B. LAMAR.

To the first cross interrogatory, witness answering, saith, that he had no conversation with Mr. Kelsey on the subject.

2. To the second cross interrogatory, witness answering saith, that all he heard of the matter was from Mr. Hobby.

3. To the third cross interrogatory, the witness answering, saith, that he was not aware that any settlement of the matter had been made in New York; of course he cannot say whether he met Hobby after such settlement or not.

4. To the fourth cross interrogatory, witness answers that he knows nothing more of benefit to defendants.

G. B. LAMAR.

Answered, subscribed, and sworn to before the undersigned commissioners, this fourth day of April, 1840.

J. MACPHEESON BERRIEN, [L. S.]
ROBERT M. CHARLTON, [L. S.]

No. 56.

Order of Court.

20TH MAY, 1840.

The circuit court met according to adjournment. Present, his honor Robert B. Gilchrist.

HOBBY and BOND
vs.
KELSEY and MCINTIRE.

The defendants having moved the court to dismiss the plaintiffs' bill for cause shown, and the complainants having shown cause against the said motion; after evidence read on the part of plaintiffs and defendants upon the point, and hearing counsel on both sides, it is ordered that the motion be dismissed.

No. 57.

Testimony of S. Hale by commission.

THE UNITED STATES OF AMERICA,
Sixth Circuit, South Carolina District.

THOS. P. BOND, and A. M. HOBBY,
vs.
CHS. KELSEY and CHS. MCINTIRE,

Interrogatories for Samuel Hale, a witness residing in Augusta, Georgia, to be produced and examined on the part of the complainants.

1. Do you know the parties to this suit?

2. Did you know Barna McKinne of Augusta, merchant? Is he living or dead? When did he ?

3. Do you know any thing of the said Barna McKinne taking the benefit of the insolvent debtors' act, in Augusta, in January, 1822?

4. Who were the assignees of Barna McKinne? What has become of Roger W. Cooke, the other assignee?

5. Did you act as assignee, or take any steps to get in the assets of Barna McKinne?

6. Had you any settlement with the defendants as assignee of McKinne? Was any money received from them, or demanded of them by you or the other assignee?

7. Have the goodness to examine the record of the assignment of Barna McKinne to you and Roger W. Cooke, in the office of the clerk of the inferior court of Richmond county, and the schedule thereto annexed, and say whether you have any knowledge of any assets of Barna McKinne, beyond those that are contained in his schedule?

8. Do you know any thing else that may tend to show that the defendants were not in January, 1822, indebted to Barna McKinne in the sum of $5,397 75, or any such sum? If yea, declare the same as fully as if specially interrogated.

PETIGRU & LESESUE,
Complts. Solicitors.

JAMES McLAWS, Esq.
Commissioner.

Messrs. King and Walker, defendant's solicitors, informed us they had no cross-interrogatories.

PETIGRU & LESESUE,
Complts. Solrs.

Depositions of witness sworn and examined, to wit: Samuel Hale, aged about (50) fifty years.

To the annexed interrogatories Samuel Hale gives the following answers:

First question. I know A. M. Hobby, Charles Kelsey and Chas. McIntire.

Second. I did know Barna McKinne, merchant of Augusta. He is dead.

Third. I do know that Barna McKinne did take the benefit of the insolvent debtors' act in 1822 or 1823.

Fourth. The assignees were Roger W. Cooke and Samuel Hale. R. W. Cooke departed this life long since.

Fifth. I did act as one of the assignees, but the business was managed mostly by Roger W. Cooke, who was an attorney at law, and appointed on the part of the person who made the assignment.

Sixth. I do not recollect having had any settlement with the

defendant as assignee. I do not recollect that any money was received or paid by myself or Roger W. Cooke.

Seventh. I have no information of any assets of Barna McKinne, other than those in the schedule furnished the assignees.

Eighth. I have no information of any transaction or business between the defendants and Barna McKinne.

SAMUEL HALE.

Sworn to before me, this 4 December, 1839, and subscribed

JAMES McLAWS, *Commissioner.* [L. S.]

No. 58.

Assignment of B. McKinne.

At a meeting of the inferior court on Tuesday, the 8th day of January, 1822. Present, the honorable Holland McTyre, Valentine Walker, Samuel Hale and Ralph Ketchum, justices.

On motion, ordered that Barna McKinne, an applicant for the benefit of the insolvent acts of this State, be brought up before the court. And the said Barna McKinne being accordingly brought up, Richard H. Wilde, Esq. attorney for the plaintiffs in execution, suggested fraud in terms of the act of the General Assembly, in such case made and provided. Whereupon a jury being prayed, the following persons were drawn as such, viz:

1. Jacob Daniel; 2. Thomas Delanan; 3. Samuel Goff; 4. Daniel Howell; 5. Edmund B. Glascock; 6. John C. Holcombe; 7. Samuel B. Tarner; 8. Thomas Clements: 9. Edmund Palmer; 10. Wm. Farrington; 11. Frederick Winter; 12. Wm. Templeton.

Who are required to attend this court on Friday, the eleventh inst. at 11 o'clock, A. M., at which time this court will again assemble, to the end that an investigation before a jury may be had into the matters of fraud suggested as aforesaid.

It further ordered that the said Barna McKinne be remanded and that he be again brought up before this court, on the day required for the attendance of the jury aforesaid.

Friday, 11th January, 1822.

The court met agreeable to the adjournment of the 8th instant. Present, the honorable Ralph Ketchum, Holland McTyre, Peter L. Cantleton, Valentine Walker, justices.

In the matter of Barna McKinne who applies for the benefit of the insolvent acts of this State, fraud being suggested by Longstreth & Bailey, and John Clendinning, creditors, whereupon an issue was made up, and the following persons sworn to try the said issue, to wit:

1. Samuel Goff; 2. Edmund B. Glascock; 3. Samuel Howell; 4. Frederick Winter; 5. Simeon Been; 6. Jarvis Ballad; 7. Alexander Bryan; 8. Woodson Ligon; 9. Thomas Clements; 10. Edward McFarland; 11. Augustus C. Caldwell; 12. Robert Dillon.

No fraud.

A. C. CALDWELL, *Foreman.*

AUGUSTA, Jan. 11th, 1822.

Barna McKinne, an applicant for the benefit of the insolvent acts of this State, having been brought up in pursuance of the order of this court, and having exhibited a schedule of his property in terms of the act of the General Assembly in such case made and provided, and having taken the oath prescribed by law, it is ordered that the said Barna McKinne be and he is hereby and henceforth discharged and enlarged from his confinement in terms of the acts of the General Assembly in such case made and provided.

The court then proceeded to appoint assignees, in pursuance of the law, and Samuel Hale and Roger W. Cook, Esquires, were appointed assignees accordingly. Whereupon, it is ordered, that the property, goods, effects and securities, as surrendered by the said Barna McKinne, be assigned to them for the benefit of the creditors in terms of the acts of the General Assembly in such cases made and provided.

GEORGIA, *Richmond County,*

Know all men by these presents, that I, Barna McKinne, at present of the county and State aforesaid, having been this day discharged as an insolvent debtor by order of the honorable the inferior court of the county and State aforesaid, in pursuance of the insolvent acts, and having rendered a schedule in compliance with the provisions of said acts, do by these presents assign and set over to Roger W. Cook, Esq., for the benefit of my creditors, all the property contained in the aforesaid schedule, and all interest I have therein of what nature or kind soever, fully and legally, to all intents, rights, or purposes, which I have in the property, in the said matters and things therein contained.

In witness whereof, I have hereunto set my hand and seal, the eleventh day of January, one thousand eight hundred and twenty-two.

B. McKINNE. [L. S.]

In presence of—
THOMAS GLASCOCK,
JNO. C. SNEAD.

Schedule of the property, claims and effects, surrendered by Barna McKinne to his creditors, before the judges of the inferior court of Richmond county, at Augusta, 11th day of January, 1822.

Amount due by T. Shepard since March, 1819, in dispute - - - - - - -	$2,354 25
Amount Mathew Church's note, dated 25th February, 1817, at twelve months, since when he has been in England - - - - - -	11,752 30
Cecil, Denison Benson & Co., Liverpool, to whom I shipped eighty odd bales cotton, the precise number I cannot tell without having reference to ship's books, which are at Silver Bluff, and no sales have been received and have failed, cost as near as I can recollect - - - - - - -	8,600 00
Amount due by Thomas Battle & Co., Boston, on sales of produce, who have stopped payment, but represented as good, May, 1818 - - -	1,371 55
Balance judgment against C. Goodwin of South Carolina, which binds an undivided half of a tract of land of 2,000 acres original survey, lying in Barnwell, the exact amount until a settlement takes place cannot be ascertained, supposed -	2,000 00
One pew in Episcopal church, Augusta - -	200 00
Four shares Union Road Company stock, opposite Savannah - - - - - - -	400 00
One share agricultural stock attached thereto -	25 00
One sixth part four tracts of land Richmond county, which I claim in right of my wife as belonging to estate of T. Galphin, two of which tracts titles were taken in my name, but the only interest I had is stated as above, original survey, 200, 300, 300, 400, in all 1,200 acres. Two of the heirs agreed to take two tracts 500 acres, which would be a fair division. The other two tracts measure by re-survey, upwards 900 acres, and is worth $15 per acre; one fourth part this valuation will be mine. These two tracts are those mortgaged to John McKinne, and known as McGilvray's - - - - - -	3,375 00
One sixth part any property hereafter coming to estate T. Galphin, in right my wife.	
Silver Bluff lands about 9000 acres, mortgaged to pay $20,250, originally owned by Wayne & Sims in England, and when Mr. Sims settled with them, he paid me the mansion house Augusta, which I sold to the State bank for $23,000, and became paymaster as above. The lands are worth at least $5 per acre, and if well managed, will leave in my favor	24,750 00
I mortgaged to John McKinne, 126 negroes therein named, to secure to him what I owed him as pro-	

prietor to the Bridge bank, and to secure to Henry Schulz, the redemption of the outstanding Bridge bills, I became bound for when I purchased his interest in said institution, ninety of which were at Silver Bluff and where I then resided; thirty-six in possession of Major Marshal at Meadow's garden as joint property, and thirty-seven in possession of P. Derpon, East Florida, as joint property of Droward of Savannah, as reference to the mortgage in clerk's office will more fully appear. I have now at Silver Bluff and hired out, 70 negroes, composing a part of the above described negroes; those with Mr. Droward were taken to pay a debt of P. McKinne & Co. Those with Major Marshall were sold by the sheriff at Augusta; all the horses, mules, wagons, carry logs, stock, household and kitchen furniture are included in the mortgage

No. 4.

Amount brought forward as above stated. As respects the property in South Carolina, Henry Shultz has lately instituted a suit in that State with a view to subject the same to the redemption of Bridge bills but no decision has yet been made thereon, a copy of which bill is herewith shewn, this property in my estimation is worth - - - -	32,430 00
Provisions made on plantation I presume may be worth	1,000 00
One carriage and harness and horses, $500, one gig and old harness, $100 - - - -	600 00
Two plantation horses and three mules and four head oxen - - - - - -	380 00
Amount due by C. Liverman, May 1819 - -	40 00
Amount due by Way & White, January 1818 Since failed and in judgement - - -	2,203 00
Amount due by T. A. Schordde, since June 1818 -	1,669 15
Amount due by Wm. Reynolds, May 1819 - -	1,167 81
Amount due by Gowhales & Cavriva T. Cavana who had stopped payment and good - - -	960 00
Amount advanced J. P. Richards, November 1818 -	50 00
Amount Leroy, Napier & Co., July 1817, in dispute -	90 63
Amount La Board's account, October 1817 - -	112 25
Amount W. H. Flournoy's account June 1818 -	216 00
Amount J. Brant's account, July 1817 - -	3,000 00
Amount G. A. Bowl's account, April 1818 - -	194 98
Amount Green & Cook's account, April 1817, in dispute - - - - - -	296 56
Amount Olmstead & Battel's account, June 1817 -	1,690 67

The district court at Savannah, decreed that I should,

with others who had become into possession of negroes send them out of the United States. I accordingly sent them 23, of that number, were a part I mortgaged to the State bank. The court decreed that 15 of those sent were the property of the Spanish claimants. They I had to give up. There remains not sent away 12, which is ready with those in Florida to be turned over to the State bank should I fall in debt to them on a settlement which I contend they have been paid and will appear so on a settlement, these 35 at $400 each - - - 14,000 00

One tract of land Wilkinson county, 202½ acres granted 8th December, 1807, which I did not return for Ta's and presume have been sold to pay same

I owed on account a judgment obtained by United States Bank Savannah, with costs and interest, about $14,000, on account of which twenty-seven of my negroes were sold, and left a balance of about $8,000 due. This, Mr. T. Gardner, as endorser, had to pay. I gave him my house and lot in Savannah, the balance of Fitch & Chare's note placed in said bank for collection, which ought to be $1,500, both pieces of property ought to leave, after paying Mr. Gardner - - - - 1,000 00

I owed, and was bound to the Planters' Bank Savannah, about $67,000, and placed in their hands about $37,000 worth country paper in part, and mortgaged to them the lands and lot known as Meadow Garden, on Broad street. If the notes or country paper are paid, there are unsold on Broad street enough to bring $25,000, which I have been offered for them. The balance must bring, if properly managed, after paying as above stated, at least - - - - - - - 20,000 00

I owned with several others the land known as Forbe's Sawers, East Florida. My portion was 3,000 acres, half of which Mr. Wilde took to pay Pott & McKinne's draft on me in favor B. W. Rogers & Co., the remaining half alike pledged to pay Pott & McKinne's draft on me in favor John Graham & Co. I have been informed by Mr. Berrien that my relinquishment had been accepted, but judgment on that and the one in favor of R. W. Rogers & Co. have not as I know of been properly complied with on their part by surrendering my acceptances and having satisfaction entered upon the judgments. This must be done, or a reversion ensues.

Amout draft $20,000 due May, 1819, is	20,000 00
Andrew McLean's note, due September, 1812, for $153 50, nine and one-third years interest, $114 61 -	268 11
Willoughby Barton's draft in favor of R. R. Reid March, 1819 - -	80 00
R. Mason's notes in hands of W. T. Hansel for collection - -	100 00
Two acres of land lying on Cupboard creek I purchased to bring it in the Hickory Ridge tract, cost - -	53 00
One share in Savannah theatre, cost -	300 00
One seine, cost in Philadelphia $125, charges $12 50, two years in use, -	137 50

A suit is pending in my name against P. Kelly in Richmond county superior court to recover back the amount of money paid by me for a contract he failed to comply with, which sum of money I have turned over to William Scarborough, in part payment of moneys I owe Scarborough & McKinne.

Signed B. McKINNE.

GEORGIA, *Richmond County.*

I, James McLairs, clerk of the inferior court for the county aforesaid, do hereby certify that the foregoing nine pages contain a true and correct copy of the proceedings in the case against Barna McKinne, an applicant for the benefit of the insolvent laws of the State of Georgia, as taken from the record of minutes of said court.

In testimony whereof, I hereunto set my hand and affixed seal of office, this 19th day of June, 1839.

Signed JAMES McLAWS, *Clerk.*

GEORGIA, *Richmond County.*

I, Benjamin H. Warren, one of the presiding justices of the inferior court for the county aforesaid, do hereby certify that James McLaws, whose name appears to the foregoing certificate, is clerk of the inferior court for the county aforesaid, duly commissioned and qualified. The said certificate is in due form of law, and is done by the proper officer, and full faith and credit should be had and given to his attestation as such.

In testimony whereof, I hereunto set my hand this 19th day of June, 1839.

Signed B. H. WARREN.

No. 59.

Assignment of A. Tison to C. Kelsey & Co.

GEORGIA, *Twiggs County.*

This indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and twenty-one, between Aaron Tison, of the county and State aforesaid, of the one part, and Charles Kelsey, A. M. Hobby, and Charles McIntire, trading under the firm of C. Kelsey and Company, in the county of Chatham, State aforesaid, of the other part, witnesseth: That the said Aaron Tison, for and in consideration of the sum of eight hundred dollars to him in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said C. Kelsey & Company, their heirs and assigns, all that tract or parcel of land situate, lying, and being in the county aforesaid, and known by the Number 64, (sixty-four) containing two hundred two and a half acres, in the twenty-third district, originally Wilkinson, now Twiggs county. To have and to hold said tract or parcel of land unto them, the said C. Kelsey & Company, their heirs and assigns, together with all and singular the rights, members, and appurtenances thereof to the same in any manner belonging, to their proper use, benefit, and behoof forever in fee simple.

And the said Aaron Tison, for himself, his heirs, executors, and administrators, the said bargained premises unto the said C. Kelsey and Company, their heirs and assigns, will warrant and forever defend the right and title thereof against themselves, and against the claims of all other persons whatever.

In witness whereof, the said Aaron Tison hath hereunto
[L. S.] set his hand seal, the day and year above written.

AARON TISON.

Signed, sealed, and delivered in the presence of
CHARLES W. ROCKWELL,
LITTLETON TISON, *J. P.*

No. 60.—*Decree.*

Saturday, 30th May, 1840. The circuit court met according to adjournment. Present their honors J. M. Wayne, and R. B. Gilchrist.

A. M. HOBBY & THOS. P. BOND,
vs.
CHS. KELSEY & CHS. MCINTIRE. } Decree.

On the hearing of this cause, upon the report of the clerk acting as master, of April, 1839, and exceptions taken by the parties. It is ordered that the report be set aside.

This cause coming on to be heard on the bill, answers, general replication and evidence taken in the cause, it is adjudged, that the defendants are indebted to the complainants, in the sum of five thousand five hundred dollars, with interest as hereinafter mentioned. And that the complainant A. M. Hobby, is indebted to the defendants in the sum of four hundred and fifty-three dollars, with interest as hereinafter mentioned. And that of the said sum of five thousand five hundred dollars due the complainants, interest is payable on three thousand seven hundred and ninety-five dollars seventy-one cents, from seventh April, eighteen hundred and thirty, the day when the answer of defendant McIntire was filed, and on three hundred and fifteen dollars twenty-nine cents, from the twentieth day of December, eighteen hundred and thirty, the day when the same was received by the defendants for the sale of land in Bibb county, Georgia; and on thirteen hundred and eighty-nine dollars, from the first day of February, eighteen hundred and thirty-one, when the same is admitted to have been received from A. G. Saffold. And of the sum of four hundred and fifty-three dollars, due to the defendants by the complainant A. M. Hobby, interest is payable on three hundred dollars, from the thirteenth day of January, eighteen hundred and twenty-three; and on one hundred and fifty-three dollars, from the first day of January, eighteen hundred and thirty-two; the interest on said sums to be calculated at the rate of eight per cent. per annum to this day.

It is further adjudged and decreed, that the defendants are indebted to the complainants, in the sum of three hundred and thirty-five dollars fourteen cents, for complainant A. M. Hobby's proportion of Bridge bills in judgment. It is therefore ordered and decreed, that from the amount due to the complainants on this day, the amount due by complainant A. M. Hobby, to the defendants be deducted: and that the defendants do pay and satisfy to the complainants, the balance of the sums so decreed as aforesaid, to be due and owing by the parties, with interest on the said balance from the date of this decree, at the rate of seven per cent., and the costs of this suit.

No. 61.

Certificate of Clerk.

SOUTH CAROLINA DISTRICT, *District Clerk's Office*,

CHARLESTON, *November* 30, 1834.

I do certify, that these three hundred and forty-five pages of paper, contain just and true copies of the proceedings had in the case of A. M. Hobby and T. P. Bond, vs. Charles Kelsey and Charles McIntire, which are of record in this office.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of the said court.

H. Y. GRAY, *Dist. Clerk.*

No. 62.—*Citation.*

THE UNITED STATES OF AMERICA, *South Carolina District.*

The United States of America, to Messrs. Hobby and Bond.

You are hereby commanded to be and appear before the Chief Justice of the United States and his associates, in the Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, to have the record and the proceeding on appeal in the suit wherein you were complainants and Kelsey and McIntire defendants, and to answer to the same.

Witness my hand at Charleston, this —— day of ———, in the year of our Lord one thousand eight hundred and forty.

R. B. GILCHRIST,
Judge of the U. S. for the Dist. of S. Ca.

We acknowledge service of this citation,

PETIGRU & LESESNE,
11th Nov. 1840. *Sol's for Hobby and Bond.*

No. 63.—*Bond of Appeal.*

THE UNITED STATES OF AMERICA, *South Carolina District.*

Know all men by these presents, that we Charles Kelsey, George H. Kelsey, N. F. Potter, and N. F. Halsted, are held and firmly bound unto Alfred M. Hobby, and Thomas P. Bond, in the full and just sum of ten thousand six hundred and forty-two dollars, lawful money of the United States of America, to be paid unto the said Alfred M. Hobby and Thomas P. Bond, their certain attorney, executors, administrators, or assigns. To which payment well and truly to be made and done, we bind ourselves, and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the third day of June, in the year of our Lord one thousand eight hundred and forty, and in the sixty-fourth year of the Independence and sovereignty of the said States.

Decree	$9,220
10 p. ct.	922
	10,142
	500
	$10,642

Whereas a decree was, on the thirtieth day of May, in the present year of our Lord one thousand eight hundred and forty, pronounced in the sixth circuit court of equity of the United States of America, for South Carolina district, in the case of Alfred M. Hobby, and Thomas P. Bond, against Charles Kelsey and Charles McIntire, and the said Charles Kelsey and Charles McIntire, being dissatisfied therewith have interposed an appeal from the said decree to the Supreme Court of the United States of America, to be holden at Washington.

Now the condition of the above obligation is such, that if the aforesaid Charles Kelsey and Charles McIntire, the appellants, shall prosecute their appeal to effect, and answer and pay all such damages and costs as shall be adjudged and decreed by the said Su-

preme Court, if they fail to make their plea good, and in all respects conform to and abide by such order or orders, as may be made in the premises, then and in such case, the foregoing obligation shall be void, or else to be and remain in full force and virtue.

C. KELSEY, [L. S.]
GEO. H. KELSEY, [L. S.]
N. F. POTTER, [L. S.]
J. S. HALSTED, [L. S.]

Taken and acknowledged before me,
H. Y. GRAY, *Dist. Clerk.*

Approved: R. B. GILCHRIST.

THE UNITED STATES OF AMERICA.

In Chancery.

Between Alfred M. Hobby and Thomas P. Bond of Georgia, complainants, and Charles Kelsey of New York and Charles McIntire, formerly of South Carolina, now of Pennsylvania, defendants.

To the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States, the humble petition and appeal of the said defandants sheweth:

That sometime in November 1829, the said complainants exhibited their bill in chancery in the circuit court of the United States for the district of South Carolina against your petitioners, and on or about the 7th of April 1830, your petitioner Charles McIntire, who alone had been served with process to appear and answer the said bill, filed his answer to the same. In November 1830 and in September 1834, orders of reference were made. On the 2nd of September 1836, an attachment at law on the same cause of action on which the suit in chancery was founded, was issued in the State court of the State of South Carolina, to which the petitioner Charles Kelsey was a party as well as the petitioner Charles McIntire. And thereupon the said petitioner Charles Kelsey on or about the 10th of January 1838, filed his answer to the said suit in chancery, and the petitioner Charles McIntire filed a supplemental answer. And thereupon the proceedings at law were abandoned. And copies of the said bill and of the first answer of the petitioner Charles McIntire and of the orders of reference made thereon and the proceedings therein and of the declaration and pleadings in the said attachment and of the answer of the petitioner Charles Kelsey and of the supplemental answer of the petitioner Charles McIntire are herewith filed and submitted. And on the filing of the said answers in chancery the said attachment at law was abandoned. And on or about the 23d of April, 1839, a new order of reference was made, and several meetings of the parties, by their solicitors, took place before the clerk of the circuit court aforesaid, acting as master in

chancery, and evidence on the matters referred was taken before him and thereupon he made his report to the court. Both the complainants and defendants excepted to this report and at November term 1838, the case on this report and the exceptions mutually taken to it, and on the evidence then offered was tried before his honor Judge Wayne, who took time to consider it, and on or about the 9th of January 1839, set aside the report and sent the case back to the master with the instructions contained in his decretal order of that date. And copies of the evidence taken before the master at the first reference, and of his report, of the complainants and defendants exceptions, and of the evidence laid before the court, and the decretal order then made are herewith filed and submitted.

And the parties again met before the master, and further evidence was taken in the case. And in addition to the evidence to which the master by order of the court was confined, further evidence was taken for the use of the court on the account of damages claimed by the defendants from the complainant Hobby for the breaking of his covenant with them as set forth in the pleadings. And the master thereupon made a second report and the complainants and defendants mutually excepted to it. And on this new report and the exceptions to it, and the former report and exceptions, and all the evidence at any time taken before the master, and on the former evidence and additional evidence, the case came on for trial before his honor Judge Wayne in May 1839, who took time to consider the case. And while the case was under advisement the complainant Hobby and the defendant Kelsey in the summer of 1839, met in New York, and the court having intimated the opinion that damages could not be recovered in equity, for the breach of the contract by the defendants against the complainant Hobby, the defendant Kelsey, by the advice of counsel held Hobby to bail in New York in covenant at law for a breach of the said contract, and thereupon such communications were had between said the Hobby and Kelsey that they agreed to execute mutual releases and end their litigation, and documents to that effect were made and executed between them. And thereupon while the said case was still under advisement on or about the 8th day of January, 1840, on a special motion made in the case, leave was given to the defendants to produce evidence to support the release set up by them, and a decretal order thereon was made by the court. And thereupon evidence on both sides being taken respecting the said releases, and also further evidence by the complainants, on or about the 15th of April 1840, a motion was made for the defendants before the honorable Judge Gilchrist in the absence of the honorable Judge Wayne, to dismiss the said bill of complaint in virtue of the said release, and after full argument his honor took time to consider the motion and on consideration refused the motion. And on or about the 27th of May 1840, the case was again brought to a full hearing before their honors Judge Wayne and Gilchrist, and copies of the evidence taken before the master on his second report and also the additional evidence on the damages

claimed by the defendants, and of all the additional evidence on the trial of the case in May 1839, and of the order made thereon and on the motion made on the 8th of January 1840, and of the decretal order then made and of the further motion made in the case on the 15th of April 1840, and of the decretal order thereon, and of all the further evidence laid before the court on the further trial of the case in May 1840, and of the decree made thereon are herewith filed and submitted. And your petitioners are advised that the said decretal order of the 20th May 1840, and the said decree are erroneous, and they humbly appeal therefrom to your honors.

Your petitioners therefore pray your honors to grant to your petitioners your honors order of summons to the said complainants to put in their answer if any they will put in, to this your petitioners appeal at such time as your honors shall appoint to hear the said cause, and that your honors will please to reverse the said decretal order and the said decree, or to grant to your petitioners such relief in the premises as to your honors shall seem meet. And your petitioners shall ever pray and so forth.

M. KING, *Defts. Sol'r.*

SAVANNAH, 22*nd February*, 1820.

JOHN MCKINNE, Esqr.

DEAR SIR: Your favors of the 17th and 19th instant came duly to hand, agreeably to your request we shall pay Mr. Williamson the balance due on the wine and ship it to you. We send you by Mr. Westfelt two thousand three hundred and five dollars in Bridge bills, the balance due you as per account current enclosed. You will observe that the present account embraces a complete statement of all our transactions from the time of the first drafts we drew on you to the present day, as did the other accounts we rendered as far as they went. The balance due Messrs. McKinne & Co. say $1,699 02 we will send by the next mail with an account current with them, the balance of the Bridge bills on hand at present about $5,000, we will have Mr. B. McKinne's account examined and make out a complete statement of the whole from the commencement. If we could possibly pay Mr. Hill the $108 you request without disappointing those who we have pledged ourselves to pay, we would do so with a great deal of pleasure but such is the pressure for money with us, that we have to calculate very close, so much so, that even that sum is as important to us now as five thousand was twelve months ago.

Your friends,

Signed, C. KELSEY & Co.

SAVANNAH, 29*th February* 1820.

JOHN MCKINNE, Esq.

DEAR SIR: Your favor of the 26th instant was duly received and contents noted we are induced to believe you did not examine the accounts current, we sent you by Mr. Westfelt, (and you returned in your last) or else we should certainly been saved the mortifying circumstances attending that act. Our letter covering the accounts stated expressly, that the same was a complete statement of all of our transactions, and you cannot help but see if you will take the trouble of looking for yourself and comparing the accounts (which we now enclose you) that the last embraces both the others and that the second likewise is a copy of the first, as far as the first extends. If you are still (after examining the enclosed accounts) of opinion that we owe you more than we sent you by Mr. Westfelt, say twenty three hundred and five dollars, you had best appoint some person in this place in whom you can confide to compare and examine accounts, we can only say, that we have been very particular both in keeping and making out the accounts and have no doubt but they are correct. We did not know until the other day that you had left the accounts current we had sent you, or of your having gotten a receipt for them or of the manner of obtaining that receipt, of which we shall only say we were astonished. But as we now enclose you two of the accounts you left, the remaining one being McKinne & Co's. (for which we have had no use since

they were made out for you). We have no doubt but by examining them you will perceive your error, as by tracing the 1st, in the 2d, and both in the last, by the dates and amounts and comparing the footings of both the old ones in the last, by adding it up as far as they go, you will see that we have been consistent and correct. We having made out these accounts from our books, besides taking copies and particularly examining them now inclose them to you, if there are any appearances of errors, please say what the item is and we can just as well refer to it without, as with the accounts returned. Will you have the goodness to make out a similar statement of our account with you, and send it to us, that we may see how the accounts agree, please acknowledge the amount received by Mr. Westfelt with our last.

Your friends,

C. KELSEY & Co.

N. B. On reflection we think best to enclose McKinne & Co's. account that you may see how all the accounts stand in which you are interested, the amount of McKinne & Co's. you shall have in a short time.

C. K. & Co.

OFFICE OF CLERK U. S. FEDERAL CIRCUIT COURT,
South Carolina District.

I hereby certify that the two foregoing letters are correct copies from the letter book in evidence in the case of A. M. Hobby & Thomas P. Bond versus Charles Kelsey and Charles McIntire.

H. Y. GRAY,
Dist. Clerk.

We admit that the foregoing letters were produced in evidence in the above cause at the trial thereof, and consent that they form part of the record.

PETIGRU & LESESNE.

(Copy.)

SAVANNAH, 22d *June*, 1820.

DEAR UNCLE: I would have forw'd your ac. current by last mail, but it was not quite finished, you have it now enclosed by which you will see to your Cr. $5,091 75, for which amount we have Bridge bills sufficient to meet. Morrison informs me that Williford promises payment in the ensuing week, but for my own part I think it doubtful as W. will scarcely tell an intentional truth: could I find any property, I would order an instant execution, but it is all covered and to send him to jail is only to throw the money away, as he then would be sure to hold no property hereafter. From the enclosed letter from Mr. Harford you can judge if it is necessary

to go to Darien, if you think an attempt should be made I am ready at any moment. Catharine and myself will leave this, early next month.

Your affectionate Nephew,

A. M. HOBBY.

OFFICE OF CLERK OF THE U. S. FEDERAL CIRCUIT COURT,
South Carolina District.

I hereby certify that the foregoing is a correct copy of the original letter in evidence in the case of A. M. Hobby & Thomas P. Bond versus Charles Kelsey & Charles McIntire.

H. Y. GRAY,
Dist. Clerk.

We admit that the foregoing letter was produced in evidence at the trial of the foregoing cause, and consent that it form part of the record.

PETIGRU & LESESNE.